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BEFORE THE
TENNESSEE REGULATORY AUTHORITY

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TN REGULATORY AUTHORITY
DOCKET ROOM

In the Matter of the Petition of

360networks (USA) inc.

for Approval of an Indirect Change of Control

Case No. 02-01178

PETITION

I. INTRODUCTION

360networks (USA) inc. ("Petitioner"), by its undersigned counsel and pursuant to Section 65-4-112 of the Tennessee Code, Tenn. Code Ann. §65-4-111, hereby requests approval from the Tennessee Regulatory Authority (the "TRA") for an indirect change of control of Petitioner, as more fully explained below. Petitioner is authorized to provide facilities-based interexchange service and competitive local exchange telecommunications services in the State of Tennessee pursuant to Certificates of Public Convenience and Necessity ("Certificates") granted by the TRA.

The proposed change of control is taking place in connection with the reorganization of Petitioner, its parent, and affiliates, undertaken pursuant to orders of the Supreme Court of British Columbia, Canada, and of the United States Bankruptcy Court for the Southern District of New York. Petitioner notified the TRA of its Chapter 11 bankruptcy filing by mailing a copy of the plan of reorganization and notice of the confirmation hearing to the TRA on August 21, 2002.

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SARA KYLE, COMMISSIONER
TN PUBLIC SERVICE COMM.

The change of control will not result in the transfer of Petitioner's Certificates and will be transparent to Petitioner's carrier customers. Petitioner does not currently serve any end-user customers.

II. PETITIONER

Petitioner's legal name is 360networks (USA) inc. Petitioner is a Nevada corporation with its principal place of business located at 12202 Airport Way, Broomfield, Colorado 80021. Petitioner's telephone number is (303) 854-5000. Petitioner is a telecommunications carrier that is authorized by the TRA to provide local exchange and interexchange telecommunications services in the State of Tennessee.¹

Petitioner is a wholly owned subsidiary of 360networks holdings (USA) inc. ("US Holdings"), a Nevada corporation. US Holdings, in turn, is a majority-owned subsidiary of 360networks Corporation (formerly known as 360networks (holdings) ltd.) ("360 Corp."), a corporation organized under the federal laws of Canada. 360 Corp. is a wholly owned subsidiary of 360networks inc. ("360networks"), a Nova Scotia, Canada corporation. 360networks has three classes of shares, namely, subordinate voting series, multiple voting series, and preferred shares.

¹ See *In re Application of Worldwide Fiber Networks, Inc. For a Certificate to Provide Facilities-based Interexchange Services in Tennessee* (granted Dec. 3, 1999) (issued under Petitioner's prior name Worldwide Fiber Networks, Inc. Petitioner subsequently, with its Application for local exchange authority (below), notified the TRA of the change of its name to the present designation). See also *In re Application of 360networks(USA) inc. for Certificate of Convenience and Necessity to Provide Facilities-Based Competing Interexchange Services within the State of Tennessee* (granted Feb. 22, 2000) (facilities-based local exchange service and interexchange services).

III. DESIGNATED CONTACTS

Correspondence and communications concerning this Petition should be directed to:

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IV. DESCRIPTION OF THE TRANSACTION

On June 28, 2001, 360networks and certain of its subsidiaries commenced bankruptcy proceedings in the Supreme Court of British Columbia, Canada, under the Companies' Creditors Arrangement Act (Canada). On the same day, certain of 360networks' U.S. subsidiaries, including Petitioner, commenced analogous proceedings in the United States Bankruptcy Court, Southern District of New York, under Chapter 11 of the U.S. Bankruptcy Code.²

As of July 3, 2002, the only entity that held 20% or more of the multiple voting shares of 360networks was Worldwide Fiber Holdings Ltd. ("WFHL"). As of the same date, the only entity that held 20% or more of the subordinate voting shares of 360networks was Ledcor

² See *In re 360networks (USA) inc., et al.*, Chapter 11 Cases, Case No. 01-13721 (Bankr. S.D.N.Y.) [hereinafter *360networks Chapter 11 Cases*].

Limited Partnership ("Ledcor Limited"). Both WHFL and Ledcor Limited are wholly owned subsidiaries of Ledcor Holdings Inc. ("Ledcor").

The U.S. and Canadian Courts have approved the First Amended Joint Plan of Reorganization (U.S.)³ and Consolidated Plan of Compromise or Arrangement (Canada) (collectively the "Plans"), respectively, filed by certain U.S. and Canadian subsidiaries of 360networks, including Petitioner and 360 Corp. As noted previously, 360 Corp. is a direct, wholly owned subsidiary of 360networks.

Pursuant to these Plans, 360 Corp. will issue shares to the Agent for the Senior Lenders for nominal consideration, which shares will then be consolidated on a basis which results in 360networks receiving only a fractional interest in 360 Corp. following such consolidation. Thereafter, such fractional share will be purchased for cash upon implementation of the Plans. As a result, 360networks will no longer control 360 Corp., and 360 Corp. will become the new parent company of the reorganized 360 group of companies, including Petitioner.

Further, in accordance with the Plans, 360 Corp. will issue and allot shares from 360 Corp.'s treasury stock and distribute it as follows: (i) each of the Senior Lenders (approximately 60 institutions) will receive shares that, collectively, total approximately 80.5% of the outstanding shares;⁴ (ii) each of the unsecured U.S. and Canadian creditors (numbering in excess of 210, without giving effect to certain cash election rights these creditors may have) will receive shares totaling approximately 12% of the outstanding shares; and (iii) certain employees will receive stock grants of up to approximately 7.5% of the outstanding shares, with an additional

³ *In re: 360networks (USA) inc., et al., Order Confirming First Amended Joint Plan of Reorganization Proposed by Debtors and 360networks (Holdings) Ltd., Case No. 01-13721 (ALG) (Oct. 1, 2002).*

⁴ The Senior Lenders consist of approximately 60 unaffiliated institutions. Each will receive an allocation of treasury stock and collectively, as noted above, all of the unaffiliated Senior Lenders will hold approximately 80.5% of the outstanding shares. However, none of the unaffiliated Senior Lenders will hold a majority interest. Most of the Senior Lenders will hold interests that are approximately equal to or less than 1%.

approximately 7.5% of the stock reserved for allocation of stock options to all employees and outside directors. (The 12% of the shares allocated to the U.S. and Canadian unsecured creditors may be reduced by as much as one-half, to 6%, and replaced by cash payments made pursuant to a cash election available under the Plans.)

As a result of these transactions, under the Plans, the interests of the entity that previously may arguably have been capable of exercising indirect control over Petitioner – *i.e.* Ledcor – will be extinguished and shares of Petitioner's parent, 360 Corp., will be distributed to creditors, employees and outside directors, as set forth above. As such, an indirect change of control of Petitioner will be effected. Attached hereto as Exhibit A is an illustrative chart depicting the corporate structure of Petitioner prior to and subsequent to the change of control. A copy of the First Amended Joint Plan of Reorganization is attached hereto as Exhibit B.

V. APPROVAL OF THIS PETITION WILL SERVE THE PUBLIC INTEREST

The proposed change of control is in the public interest, since it will enhance competition in Tennessee by strengthening the financial and competitive position of Petitioner by enabling it to emerge from its current status in bankruptcy as a stronger and more viable competitor. In addition, this change of control is not expected to affect the day-to-day operations of Petitioner and will be completely transparent to the Tennessee customers of Petitioner. Finally, this transaction will not negatively affect competition in the Tennessee telecommunications market.

A. The Proposed Transaction Will Enhance Competition

TRA approval of this proposed change of control will serve the public interest by ensuring the continued viability of an important competitive provider of telecommunications services in Tennessee. As the TRA is no doubt aware, numerous competitive carriers have recently exited the market as a result of liquidation or acquisition. This has resulted in fewer competitive choices for consumers and businesses. The re-emergence from bankruptcy of

Petitioner as a major provider of telecommunications facilities and services to other carriers and service providers is therefore important to maintaining a competitive market for transmission capacity and wholesale telecommunications services in Tennessee.

Petitioner's current bankrupt status and the uncertainty attendant to that status have been detrimental to its ability to win or retain customers. The change of control that will result under the Plans will help remedy these problems and enable Petitioner to continue to offer alternative high-quality, competitively priced telecommunications facilities and services. This will benefit customers by ensuring reasonable market prices.

B. This Transaction will Enhance the Qualifications of Petitioner to Operate in Tennessee

Petitioner has previously obtained certificates from the TRA and, thus, its qualifications to provide telecommunications services are a matter of public record. As a result of this transaction, Petitioner will not only retain its current assets, operations, and personnel, but will also emerge with a much improved capital structure capable of ensuring that Petitioner will act as an effective competitor in the Tennessee telecommunications market.

C. The Proposed Transaction Will Not Adversely Affect the Customers or Operations of Petitioner

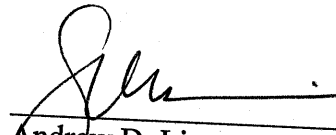
The indirect change of control will only serve to enhance Petitioner's qualifications as a regulated provider of telecommunications services. While the ultimate ownership of Petitioner's parent will change, the direct shareholdings of Petitioner vis-à-vis its parent, US Holdings, will not change. Petitioner does not expect that its current management and personnel will change substantially upon closing of this transaction; its customers will continue to be served by the current, highly qualified personnel and will continue to receive telecommunications services at the same rates, terms and conditions as currently offered. In short, Petitioner does not anticipate any immediate changes in its day-to-day operations in Tennessee as a result of the change of

control. The proposed transaction therefore will be transparent to its customers and will not adversely affect the provision of telecommunications services in Tennessee.

VI. CONCLUSION

Consistent with the Canadian Court and U.S. Bankruptcy Court orders, it is expected that the Plans, including the issuance and allotment of 360 Corp.'s shares which will result in the change of control of Petitioner, will be effectuated on or after October 31, 2002. Accordingly, Petitioner respectfully requests that the TRA approve the proposed change of control of Petitioner on a timely basis to assure that the public interest may be served as expeditiously as possible and as contemplated under the orders of the Canadian Court and of the U.S. Bankruptcy Court approving the Plans.

Respectfully submitted,



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Counsel to **360networks (USA) inc.**

Dated: October 22, 2002

INDEX OF EXHIBITS

Exhibit A

Current and Post-Transaction Organizational Chart

Exhibit B

Plan of Reorganization

Verification

EXHIBIT A

Current and Post-Transaction Organizational Chart

Current and Post-Change of Control Organizational Chart

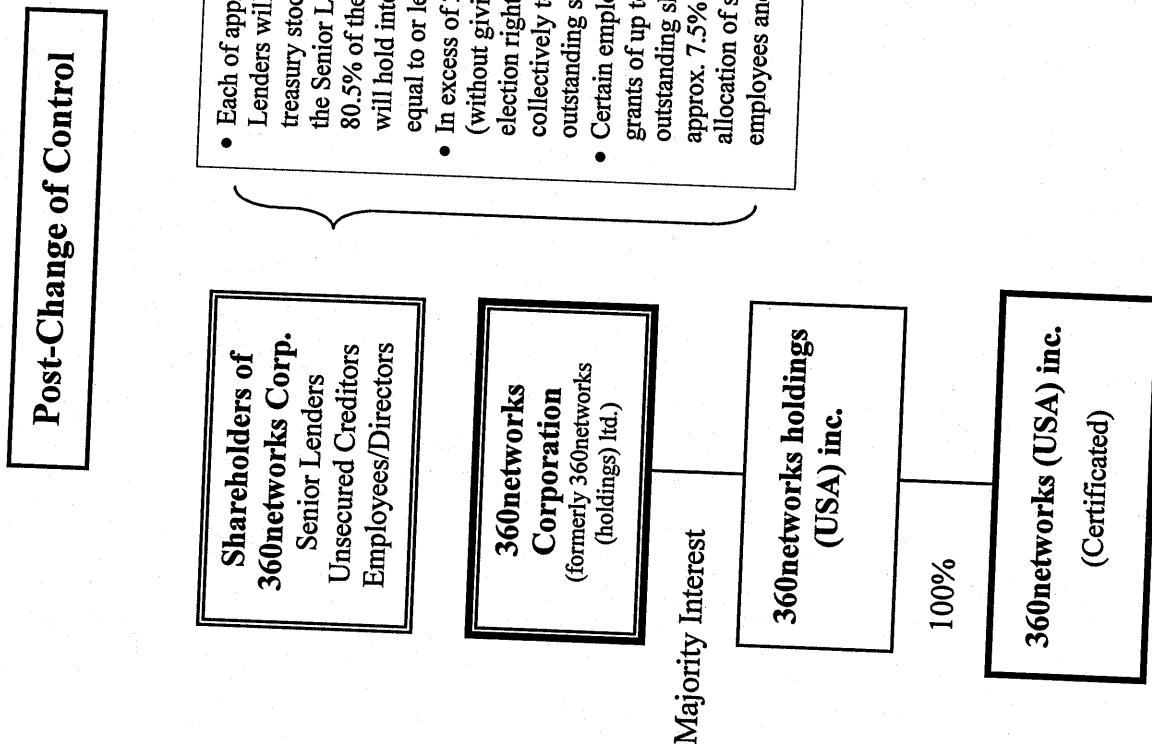
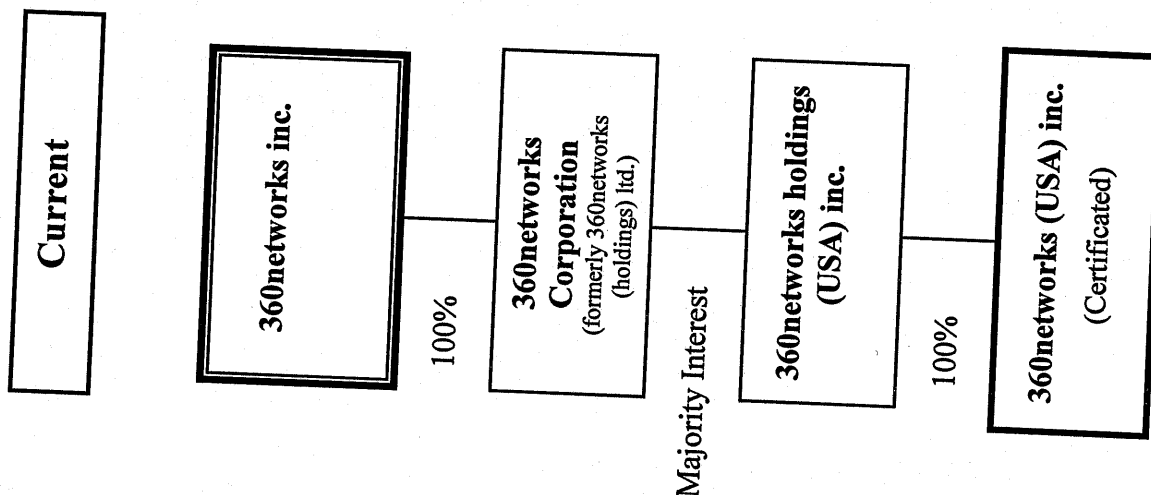


EXHIBIT B

Plan of Reorganization

7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

360networks (USA) inc., et al.,

Debtors.

Chapter 11 Cases

Case No. 01-13721 (ALG)

Jointly Administered

**FIRST AMENDED JOINT PLAN OF
REORGANIZATION PROPOSED
BY DEBTORS AND
360NETWORKS (HOLDINGS) LTD.**

August 14, 2002

WILLKIE FARR & GALLAGHER
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INTRODUCTION

360networks (USA) inc., Telecom Central, L.P., 360networks holdings (USA) inc., 360fiber inc., 360fiber (USA 2) inc., 360fiber (USA 3) inc., 360networks (USA) of Virginia inc., 360networks LLC, 360networks Illinois LLC, 360networks Iowa LLC, 360networks Kentucky LLC, 360networks Louisiana LLC, 360networks Michigan LLC, 360networks Tennessee LLC, 360carrier management inc., TRES Management LLC, Meet Me Room LLC, Carrier Centers Georgia, inc, Carrier Center LA, inc., Texas Carrier Centers Inc., and 360pacific (USA) inc., as debtors and debtors in possession (collectively, the "Debtors") in their procedurally consolidated chapter 11 cases, and 360networks (holdings) Ltd., hereby propose this First Amended Joint Plan of Reorganization:

ARTICLE I.

DEFINITIONS

As used in this Plan, the capitalized terms set forth below shall have the respective meanings specified below, with such meaning to be equally applicable to both the singular and plural:

- 1.1. **Additional Security** shall have the meaning set forth in Section 3.4(h) hereto.
- 1.2. **Administrative Claim** means an unsecured Claim for payment of costs or expenses of administration specified in sections 503(b) and 507(a)(1) of the Bankruptcy Code.
- 1.3. **Allowed Claim** means a Claim: (a) either (i) proof of which has been timely filed with the Bankruptcy Court or has been deemed timely filed by a Final Order; or (ii) if not so filed, scheduled by a Debtor other than as disputed, contingent or unliquidated; and (b) allowed by a Final Order, by the Plan, or because no party in interest timely has filed an objection, filed a motion to equitably subordinate, or otherwise sought to limit recovery on such Claim. An Allowed Claim shall not include interest accruing after the Petition Date on the amount of any Claim except as expressly provided herein.
- 1.4. **Allowed [Class Designation/Type] Claim or Allowed [Claim Designation/Type] Interest** means an Allowed Claim or an Allowed Interest in the specified Class.
- 1.5. **Bankruptcy Code** means sections 101, et seq. of title 11 of the United States Code, as now in effect or hereafter amended with retroactive applicability to the Chapter 11 Cases.
- 1.6. **Bankruptcy Court or Court** means the United States Bankruptcy Court for the Southern District of New York, or any other court exercising competent jurisdiction over the Chapter 11 Cases or any proceeding therein.

1.7. **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court (including any applicable local rules of the United States District Court for the Southern District of New York), as applicable to the Chapter 11 Cases as now in effect or hereafter amended with retroactive applicability to the Chapter 11 Cases.

1.8. **Business Day** means any day except a Saturday, Sunday, or "legal holiday" as such term is defined in Bankruptcy Rule 9006(a).

1.9. **Carve Out Claims** means Preference Claims against the following:

(a) ADP, Inc., Cummins Rocky Mountain LLC, Anritsu Electronics Limited, Fibernet Telecom Group, Inc., ACSI Network Technologies, Charles Schwab & Co., Inc., Cigna Healthcare, GE Capital Fleet Services, Call-Net Enterprises, CNA Group Benefits, Level 3 Communications, Inc., Level 3 Communications, LLC, International Telecommunications, Inc., DCB Construction, Inc., Quantum Logistics, Inc., Liberty Funds Services, and Pipkin Inc. d/b/a Pipkin Construction.

(b) All Preference Claims against Encompass Electrical Technologies, whether based on cash payments or equipment returned to or repossessed by sellers during the 90 days preceding the Petition Date shall be Committee Claims and *not* Carve Out Claims;

(c) any Person not listed in another subsection of this section that received less than an aggregate of \$1,000,000 from the Debtors during the 90 days preceding the Petition Date if: (i) such Person has been designated in writing by the Debtors on or before the sixtieth (60th) day after the Confirmation Date (with the Debtors to provide an interim list within 30 days after the Confirmation Date), accompanied by a written explanation of the Debtors' rationale in so designating such entity; and (ii) the Debtors' have a good faith belief (taking into consideration, among other things, the interests of unsecured creditors and the Debtors' post-Effective Date enterprise) that the Committee's pursuit of such action would be harmful to the Debtors' ongoing operations or the Debtors elect to assume the related contract or lease; provided, however, that the aggregate payments during such 90-day period to those entities designated by the Debtors (including payments relating to assumed contracts or leases) may not exceed \$5.4 million without the consent of the Committee (prior to the provision of such notice, the Committee may pursue any Claim subject to such designation);

(d) Debtor Professionals;

- (e) all present and former employees of the Debtors or their affiliates;
- (f) the Prepetition Lenders, their professionals and all other Persons released pursuant to Section 7.5(b) of the Plan;
- (g) any person or entity to the extent the Preference Claim against it previously was settled by an order of the Bankruptcy Court;
- (h) any of the Debtors or the CCAA Plan Debtors, and any entity that is a wholly owned subsidiary of any of the Debtors or the CCAA Plan Debtors;
- (i) any Person to the extent the Preference Claim against such Person is based on equipment returned to or repossessed by sellers during the 90 days preceding the Petition Date and not listed on Schedule 1.9(i) hereto; *provided, however*, that if any such unlisted equipment return is subsequently identified, then the Preference Claim based on such return shall be a Carve Out Claim only if the Debtors have a good faith belief (taking into consideration, among other things, the interests of unsecured creditors and the Debtors' post-Effective Date enterprise) that the Committee's pursuit of such action would be harmful to the Debtors' ongoing operations; and
- (j) any Person on Schedule 1.9(j) hereto to the extent the Preference Claim against such Person is based on payments under agreements to be assumed by the Debtors, provided that such payments to Persons that received less than an aggregate of \$100,000 from the Debtors during the 90 days preceding the Petition Date shall be subject to the \$5.4 million limitation in Section 1.9(c).

1.10. **Cash** means cash and cash equivalents, including but not limited to bank deposits, checks, and other similar items in each case denominated in Dollars.

1.11. **Cash Collateral Order** means that certain Third Stipulation and Order Authorizing Use of Collateral and Providing Adequate Protection, dated December 19, 2001, approved by the Bankruptcy Court in the Chapter 11 Cases (including the predecessor Stipulations and Orders Authorizing Use of Collateral and Providing Adequate Protection insofar as they continue to govern any periods prior to December 19, 2001).

1.12. **CCAA** means Canadian Companies' Creditors Arrangement Act.

1.13. **CCAA Plan Debtors** means 360networks (holdings) ltd.; 360fiber ltd.; 360finance ltd.; Carrier Centers (Canada) Ltd; 360 Urbanlink Ltd.; 360networks (CDN fiber) ltd.; 360network services ltd.; and 360cayer ltée;

- 1.14. **CCAA Plan** means the plan of arrangement, dated July 18, 2002, filed by the CCAA Debtors in the Supreme Court of British Columbia.
- 1.15. **Chapter 11 Case** means the chapter 11 case of each Debtor pending before the Bankruptcy Court.
- 1.16. **Claim** means a claim against a Debtor, whether or not asserted, known or unknown, as such term is defined in section 101(5) of the Bankruptcy Code.
- 1.17. **Class** means a group of Claims or Interests as classified under the Plan.
- 1.18. **Class 4 Cash Distribution** means \$135,000,000.
- 1.19. **Committee** means the Official Committee of Unsecured Creditors in the Chapter 11 Cases appointed by the Office of the United States Trustee for the Southern District of New York, as such committee may be reconstituted from time to time.
- 1.20. **Committee Claims** mean all Preference Claims except Carve Out Claims and claims against the Ledcor Group or Netrail, Inc.
- 1.21. **Committee Preference Fees** mean the Committee's professional fees and expenses incurred on or after July 1, 2002 regarding: (a) Committee Claims; (b) resolution of unsecured claims against the Debtors held by the targets of Committee Claims; and (c) Carve Out Claims.
- 1.22. **Committee Professionals** means Sidley Austin Brown & Wood LLP; Ernst & Young Corporate Finance LLC; Bragar Wexler Eagel & Morgenstern, LLP; and Shandro Dixon Edgson.
- 1.23. **Committee Recovery Percentage** means 85% with respect to the first \$30 million of Net Preference Recoveries, and 80% with respect to Net Preference Recoveries in excess of \$30 million.
- 1.24. **Confirmation Date** means the date the Clerk of the Court enters the Confirmation Order on the Bankruptcy Court's docket.
- 1.25. **Confirmation Order** means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.
- 1.26. **Debtor Professionals** means Cahill Gordon & Reindel; Cline, Williams, Wright, Johnson & Oldfather, LLP; Davis Wright Tremaine LLP; Freshfields Bruckhaus Deringer; Lazard Frères & Co. LLC; and Willkie Farr & Gallagher.
- 1.27. **Debtors** has the meaning ascribed to such term on the first page of the Plan, with each of the Debtors individually referred to herein as a Debtor.
- 1.28. **Derivative Claim** means a claim that is property of any of the Debtors pursuant to section 541 of the Bankruptcy Code and any state or federal fraudulent

conveyance, fraudulent transfer, preference, avoidance and other similar claims and causes of action for the benefit of creditors that the Debtors are authorized to pursue in accordance with the Bankruptcy Code and other applicable law.

1.29. **Disclosure Statement** means the Disclosure Statement respecting the Plan approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code; as such Disclosure Statement may be amended, modified, or supplemented (and all exhibits and schedules annexed thereto or referred to therein).

1.30. **Disclosure Statement Order** means the order of the Bankruptcy Court approving the Disclosure Statement.

1.31. **Disputed Claim** means a Claim (or portion thereof) as to which:
 (a) an objection has been timely filed, and such objection has not been either:
 (x) withdrawn, or (y) overruled or denied in whole by a Final Order; (b) before the deadline for filing an objection to the Claim, the amount of the Claim specified in the applicable proof of Claim exceeds the amount of any corresponding Claim scheduled by the Debtors in the Schedules as being neither disputed nor contingent or no such amount is scheduled as being neither disputed nor contingent; (c) there is a dispute as to the classification thereof; or (d) the amount of such Claim (or such portion) is unliquidated.

1.32. **Distribution** means a distribution of Cash or other property pursuant to the Plan.

1.33. **Distribution Date** means any date that is: (a) the Effective Date; (b) the Initial Distribution Date; (c) any Interim Distribution Date; or (d) the Final Distribution Date.

1.34. **Dollars and the symbol \$** means dollars constituting legal tender for the payment of public and private debts in the United States of America.

1.35. **Effective Date** means a date to be determined by the Debtors that will be no later than the first Business Day that is 20 days after the later of: (a) the date each of the conditions to the Effective Date has been satisfied or waived, provided no stay of the Confirmation Order is then in effect; or (b) the date any stay of the Confirmation Order is vacated or, if section 8.2(a) of the Plan has not been waived, any appeal, rehearing, remand, or petition for certiorari regarding the Confirmation Order is resolved by Final Order in a manner that does not reverse or materially modify the Confirmation Order.

1.36. **Estimation Order** means an order or orders of the Bankruptcy Court estimating for voting and/or distribution purposes (under section 502(c) of the Bankruptcy Code) the aggregate Face Amount of Disputed Claims or one or more Disputed Claims in a Class. The defined term Estimation Order includes the Confirmation Order if the Confirmation Order grants the same relief that would have been granted in a separate Estimation Order.

1.37. **Existing Security** means the Liens held by the holders of Prepetition Lender Claims (or by the Prepetition Agent on its and their behalf) in or on the assets and properties of the Debtors to secure the Prepetition Lender Claims.

1.38. **Face Amount** means respecting a Claim: (i) if the holder of such Claim has not filed a proof of Claim by the applicable bar date and there is no Final Order fixing such Claim, the amount of such Claim that is listed in the Schedules as undisputed, noncontingent and liquidated or, if no amount is listed, zero (\$0) dollars; (ii) if the holder of such Claim has filed a proof of Claim by the applicable bar date, the liquidated amount as stated in such proof of Claim, or, if no liquidated amount is listed, then zero (\$0) dollars unless such amount is allowed or estimated by Final Order; (iii) an amount fixed or estimated by a Final Order; or (iv) in all other cases, zero (\$0) dollars.

1.39. **Final Distribution Date** means: (a) respecting each Claim that is not a Class 4 or 7 Claim, the first Business Day 20 days (or such longer period as may be reasonably determined by the Reorganized Debtors) after the later of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim; (b) respecting Class 4 Claims, the Effective Date; and (c) respecting Class 7 Claims, the first Business Day 20 days (or such longer period as may be reasonably determined by the Reorganized Debtors and the Committee) after the later of the date on which: (i) all Disputed Claims in Class 7 have been resolved by Final Order; and (ii) all of the Committee Claims have been settled or resolved by Final Order.

1.40. **Final Order** means an order or judgment, as entered on the docket of the applicable court that has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, seek review or rehearing or petition for certiorari has expired and no timely-filed appeal or petition for review, rehearing, remand or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought.

1.41. **General Unsecured Claim** means any Claim that is not an: (a) Administrative Claim; (b) Priority Tax Claim; (c) Priority Claim; (d) Prepetition Lender Claim; (e) Nonconsensual Lien Claim; (f) Secured Claim; or (g) any other Claim included within any other Class other than Class 7.

1.42. **Holdings USA** means 360networks holdings (USA) inc.

1.43. **Impaired Class 6 Claims** means those Class 6 Claims to be treated under the Plan in a manner rendering such Claims impaired under section 1124 of the Bankruptcy Code, as identified on Schedule 1.43 hereto.

1.44. **Initial Distribution Date** means the first Business Day 20 days after the Effective Date, or such longer period as may be reasonably determined by the Reorganized Debtors, in consultation with the Committee, to make initial Distributions under the Plan (other than to holders of Class 4 Claims); *provided, however*, that in no event shall the Initial Distribution Date for Class 7 occur later than 45 days after the Effective Date without the Committee's consent.

1.45. **Intercompany Claim** means a Claim of any Debtor, CCAA Plan Debtor, or Nondebtor Affiliate against a Debtor.

1.46. **Interest** means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in a Debtor.

1.47. **Interim Distribution Date** means any date after the Initial Distribution Date on which the Reorganized Debtors and the Committee determine, in their sole discretion, that an interim distribution should be made to Class 7 in light of, inter alia, resolutions of Disputed Claims, aggregate Net Preference Recoveries, and the administrative costs of such a distribution.

1.48. **JPMorgan Chase Bank** means JPMorgan Chase Bank, a New York banking corporation (formerly known as The Chase Manhattan Bank, N.A.).

1.49. **Ledcor Group** means Ledcor Industries Inc. and its following affiliates: Ledcor Design-Build (BC) Inc., Ledcor Industries Limited, and any other Ledcor Industries Inc. affiliate that did not receive over \$100,000 in the aggregate from the Debtors during the 90 days preceding the Petition Date identified by the Debtors in writing on or before the earlier of the Confirmation Date and October 1, 2002.

1.50. **Liens** means mortgages, deeds of trust, liens, and other security interests.

1.51. **Lump Sum Election** means the option of a holder of an Allowed Class 7 Claim to elect to receive pursuant to the Plan a Cash Distribution in lieu of New Parent Stock otherwise allocated on account of such Allowed Class 7 Claim, subject to the terms and conditions set forth in Section 3.7 of the Plan.

1.52. **Net Preference Recoveries** mean: (a) aggregate recoveries received by or on behalf of the Debtors (including all proceeds of Committee Claims) under sections 547 or 550 of the Bankruptcy Code solely from litigation or settlement of Preference Claims; less: (b) all out of pocket fees and expenses incurred by the Debtors, Reorganized Debtors, and the Committee (including, without limitation, all fees and expenses of professionals) from and after July 1, 2002, in analyzing, investigating, pursuing, or settling such claims, provided that: (i) respecting recoveries on Committee Claims, the only deductions shall be all Committee Preference Fees and Requested Debtor Fees; and (ii) respecting recoveries on Carve Out Claims, the only deductions shall be the aggregate out of pocket fees and expenses of the Debtors and Reorganized Debtors to the extent allocable to obtaining recoveries on Carve Out Claims.

1.53. **New Parent** means 360networks (holdings) ltd., which will be the ultimate parent company of the Reorganized Debtors as of the Effective Date.

1.54. **New Parent Stock** means the new common stock of the New Parent to be issued on the Effective Date.

1.55. **New Senior Secured Notes** means the notes, dated as of the Effective Date, to be issued Ratably to the holders of Allowed Prepetition Lender Claims

in the aggregate principal amount of \$215,000,000, with key terms including those on Schedule 1.55 hereto.

1.56. **New Long Term Incentive Plan** means a share incentive and award plan, providing for the discretionary grant to eligible plan participants, including employees and outside directors, of various equity-based awards in the form of or relating to the New Parent Stock, including options to purchase shares of New Parent Stock.

1.57. **Nonconsensual Lien Claim** means a claim to the extent secured by a valid, binding, perfected, and enforceable (other than in respect of the stay of enforcement arising from Bankruptcy Code section 362) nonconsensual lien such as a mechanic's lien or a tax lien.

1.58. **Nondebtor Affiliate** means 360networks inc. and each of its wholly owned direct and indirect subsidiaries that is not a Debtor or a CCAA Plan Debtor.

1.59. **Non-Discharged Class 4 Claims** shall have the meaning set forth in Section 3.4(g) hereto.

1.60. **on notice** means, with respect to any specified act and any specified Person: (i) if such Person has consented to such act in writing, no additional notice and; (ii) otherwise, the provision to such Person of at least five business days' advance written notice of such act (which written notice must be furnished to such Person by hand, overnight courier, telecopier or other means reasonably intended to provide immediate or overnight delivery) and opportunity by such Person receiving such notice to object to such act before the Bankruptcy Court.

1.61. **Person** means any individual, corporation, partnership, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, or any other entity.

1.62. **Petition Date** means June 28, 2001.

1.63. **Plan** means this First Amended Joint Plan of Reorganization proposed by the Debtors and 360networks (holdings) ltd., together with any amendments or modifications hereto as the Debtors may file hereafter (such amendments or modifications after the Confirmation Date only being effective if approved by order of the Bankruptcy Court).

1.64. **Preference Account** means an escrow or trust account maintained by and under the sole and exclusive control of the Committee that: (a) will hold funds advanced by the Debtors or Reorganized Debtors for Committee Preference Fees incurred after the Effective Date and the proceeds from Committee Claims; (b) from which will be paid post Effective Date Committee Preference Fees, Requested Debtor Fees, and any fees associated with maintaining or making distributions from such account; and (c) which shall constitute the source of distributions to be made under the Plan with respect to Net Preference Recoveries.

1.65. **Preference Claims** means claims of the Debtors under § 547 and/or § 548 of the Bankruptcy Code based on Cash payments or equipment returns made by the Debtors during the 90 days preceding the Petition Date.

1.66. **Prepetition Agent** means JPMorgan Chase Bank, as Administrative Agent under the Prepetition Credit Agreement.

1.67. **Prepetition Credit Agreement** means that certain Credit Agreement, dated as of September 29, 2000, as amended, among 360networks inc., 360networks holdings (USA) inc., JPMorgan Chase Bank, as Administrative Agent and Collateral Agent, Chase Securities, Inc., as Joint Book Manager and Co-Lead Arranger, Credit Suisse First Boston Corporation (successor in interest to DLJ Capital Funding, Inc.), as Joint Book Manager, Co-Lead Arranger and Co-Documentation Agent, Goldman Sachs Credit Partners L.P., as Arranger and Syndication Agent and Toronto Dominion (Texas), Inc., as Arranger and Co-Documentation Agent and the lenders from time to time parties thereto.

1.68. **Prepetition Lender Claim** means any Claim against a Debtor arising under: (a) the Prepetition Credit Agreement; (b) all agreements, documents, notes, instruments, and any other agreements delivered pursuant thereto or in connection therewith, including, without limitation, loans, advances, letters of credit and other financial accommodation; or (c) the Cash Collateral Order and any other postpetition cash collateral order related thereto.

1.69. **Priority Claim** means any Claim, if allowed, entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim (including a Professional Fee Claim); or (b) a Priority Tax Claim.

1.70. **Priority Tax Claim** means: any Claim, if allowed, entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

1.71. **Professional Fee Claim** means an Administrative Claim for compensation or reimbursement of expenses pursuant to section 327, 328, 330, 331 or 503(b) of the Bankruptcy Code in connection with an application made to the Bankruptcy Court in the Chapter 11 Cases.

1.72. **Ratable, Ratably or Ratable Share** means a number (expressed as a percentage) equal to the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of: (a) Allowed Claims; plus (b) Disputed Claims (in their aggregate Face Amount or as otherwise determined by the Bankruptcy Court) in such Class as of the date of determination. For purposes of Distributions under the Plan, such calculation shall be as of the date 10 Business Days (or such other fixed period reasonably determined by the Debtors or Reorganized Debtors and, for Class 7, the Committee) prior to each Distribution Date.

1.73. **Record Date** means the date provided in the Confirmation Order for determining which holders of Claims and Interests are entitled to Distributions under the Plan.

1.74. **Registration Rights Agreement** means the registration rights agreement between New Parent and certain holders of New Parent Stock.

1.75. **Reorganized 360** means, collectively, the Reorganized Debtors and the CCAA Plan Debtors.

1.76. **Reorganized Debtors** means, collectively, the Debtors on and after the Effective Date.

1.77. **Requested Debtor Fees** means out of pocket fees and expenses reasonably incurred by the Debtors or Reorganized Debtors respecting Committee Claims at the specific request of the Committee.

1.78. **Required Class 4 Holders** shall have the meaning set forth in Section 3.4(b) hereto.

1.79. **Schedules** means a Debtor's schedule of assets and liabilities filed with the Bankruptcy Court pursuant to sections 521 and 1106(a)(2) of the Bankruptcy Code.

1.80. **Secured Claim** means a Claim that is either secured by a lien on property in which a Debtor has an interest pursuant to section 506 or 1111(b) of the Bankruptcy Code or subject to setoff under section 553 of the Bankruptcy Code.

1.81. **Steering Committee** means the steering committee of holders of Prepetition Lender Claims, as such committee may be constituted from time to time.

1.82. **Unclaimed Property** means any Distribution under the Plan unclaimed by the holder of the Allowed Claim or Interest entitled to such Distribution 180 days after the Distribution Date applicable to such Distribution.

1.83. **Underlying Rights** mean all rights, whether written or oral, express or implied, public or private, that authorize a Debtor to construct, install, operate, maintain, repair, sell, assign, transfer, remove, abandon or provide services in or upon any public or private property, both real and personal, or within any federal, state or local jurisdiction, or any agency thereof, including without limitation, all agreements, franchises, leases, licenses, certificates, encroachments, permits, rights-of-way, authorizations, notices, waivers, releases, grants, rights, and interests providing such authorization. The foregoing expressly includes, but is not limited to, all of the following:

(i) authorizations, licenses or certificates of public convenience and necessity from any state administrative agency including state public utility commissions or similar agencies with regulatory or administrative oversight of communications companies;

(ii) permits, notices, licenses, plans, authorizations or waivers from any federal, state, county, local agency, or any public or quasi-public agency required for compliance with any environmental requirements;

- (iii) franchises, licenses, permits or agreements from any state, city, county, local or quasi-public entities or agencies;
- (iv) easements, amended easements, communications easements, licenses, leases, agreements, consents, or letters authorizing a Debtor to operate in or upon private property or fixtures;
- (v) easements, agreements, licenses or leases for real property housing communications equipment or used to interconnect with other communications providers or customers, including without limitation, point-of-presence sites, amplification and regeneration sites, collocation sites, manholes, meet-me-rooms, and building entries; and
- (vi) permission from any Native American tribe or related organization, whether written or oral, for a Debtor to operate in or upon tribal lands.

ARTICLE II.

CLASSIFICATION OF CLAIMS AND INTERESTS

For purposes of the Plan, Claims and Interests are classified as follows:

- 2.1. **CLASS 1**: shall consist of all Administrative Claims.
- 2.2. **CLASS 2**: shall consist of all Priority Tax Claims.
- 2.3. **CLASS 3**: shall consist of all Priority Claims.
- 2.4. **CLASS 4**: shall consist of all Prepetition Lender Claims.
- 2.5. **CLASS 5**: shall consist of all Nonconsensual Lien Claims, with each such Claim secured by different collateral to be a separate subclass for all purposes under the Plan.
- 2.6. **CLASS 6**: shall consist of all Secured Claims against the Debtors other than the Prepetition Lender Claims and Nonconsensual Lien Claims, with each such Claim secured by different collateral to be a separate subclass for all purposes under the Plan.
- 2.7. **CLASS 7**: shall consist of all General Unsecured Claims.
- 2.8. **CLASS 8**: shall consist of all Intercompany Claims.
- 2.9. **CLASS 9**: shall consist of all Interests.
- 2.10. **General Rules of Classification.**

Generally, a Claim is classified in a particular Class for voting and distribution purposes only to the extent the Claim qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim

qualifies within the description of such other Class or Classes. Unless otherwise provided, to the extent a Claim qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

ARTICLE III.

TREATMENT OF CLAIMS

Each Allowed Claim or Allowed Interest shall receive the treatment specified below for such Claim or Interest's Class in full settlement of all rights of the holder of such Allowed Claim or Allowed Interest; provided, however, that the holder of such Claim or Interest may agree to and receive less favorable treatment.

3.1. Class 1 – Administrative Claims. Class 1 is not impaired.

(a) Professional Fee Claims shall be paid in Cash in the amounts awarded on account thereof by order of the Bankruptcy Court as soon as practicable after such order is entered.

(b) Ordinary course Administrative Claims will be paid in accordance with the terms and conditions of the particular transaction giving rise to such liabilities.

(c) Other Administrative Claims shall be paid in Cash in full on the later of the Effective Date and the date any such Claim becomes an Allowed Claim.

3.2. Class 2 – Priority Tax Claims. Class 2 is not impaired.

(a) On the later of the Effective Date or as soon as reasonably practicable thereafter and 10 Business Days after the date on which a Class 2 Claim becomes an Allowed Claim, such Claim shall be paid in full, together with any interest that has accrued through the date of payment pursuant to the interest terms of this Section 3.2, in Cash; provided, however, that the Debtors shall have the option, exercisable prior to the Effective Date, to pay any Priority Tax Claim over a period not longer than six (6) years from the date of assessment of the applicable tax, with installments of interest and principal on the unpaid portion payable annually in arrears at the rate of 5½% per annum (or such other rate of interest as may be ordered by the Bankruptcy Court prior to the Effective Date to provide the holders of Priority Tax Claims with deferred cash payments having a value, as of the Effective Date, equal to the allowed amount of such Priority Tax Claims, or as agreed to by the holder of the Claim and the Debtors).

(b) Unless prior to the Confirmation Date the holder of a Priority Tax Claim files and serves on counsel to the Debtors a statement that the portion of any such Priority Tax Claim that is in the nature of a penalty is compensatory and not punitive, then such penalty portion shall be deemed to be disallowed and the holder of such Claim shall be entitled to no distribution on account of such penalty portion.

3.3. Class 3 – Other Priority Claims. Class 3 is not impaired.

On the later of the Effective Date or as soon as reasonably practicable thereafter and 10 Business Days after the date on which a Class 3 Claim becomes an Allowed Claim, such Claim shall be paid in full in Cash.

3.4. Class 4 – Prepetition Lender Claims. Class 4 is impaired.

Class 4 Claims shall be treated as follows:

(a) Allowance. Prepetition Lender Claims shall be Allowed Claims against each of the Debtors in the aggregate amount of \$1,206,161,903.62 (including \$700,000 in stated amount of undrawn and outstanding letters of credit issued under the Prepetition Credit Agreement). As a component of the settlements embodied in the Plan, Class 4 Claims against all Debtors shall be aggregated for voting and distribution purposes, but for no other purposes.

(b) Distributions. On the Effective Date, under the Plan in combination with the CCAA Plan, each holder of an Allowed Prepetition Lender Claim shall receive: (i) its Ratable Share of the Class 4 Cash Distribution; *provided, however*, that the holders of not less than 66-2/3% in amount of Class 4 Claims (the “Required Class 4 Holders”) shall have the right, in their sole discretion and as evidenced by the written consent of the Prepetition Agent, to agree to defer payment of up to \$30,000,000 of the Class 4 Cash Distribution to all holders of Class 4 Claims until after the Effective Date on terms and conditions acceptable to the Required Class 4 Holders (it being understood and agreed that any such agreement by the Required Class 4 Holders to defer payment of such Cash shall be binding on all holders of Class 4 Claims, and such deferral, and any indebtedness or instruments evidencing the obligation of the Debtors to pay the deferred amount, shall be allocated Ratably among all holders of Class 4 Claims); *provided, further, however*, that the Prepetition Agent shall be authorized to withhold from such Cash an amount not to exceed 105% of the maximum liability (the “L/C Exposure Amount”) with respect to letters of credit issued under the Prepetition Credit Agreement and outstanding as of the Effective Date (collectively, the “Designated Letters of Credit”). The Prepetition Agent shall be authorized to reimburse itself in its capacity as Issuing Bank under the Prepetition Credit Agreement from the L/C Exposure Amount for any drawings under a Designated Letter of Credit. Upon the expiration, cancellation, or other termination of a Designated Letter of Credit, the Prepetition Agent shall distribute any amounts remaining from the L/C Exposure Amount attributable to such Designated Letter of Credit Ratably to the holders of the Allowed Prepetition Lender Claims; (ii) its Ratable Share of \$215,000,000 in principal amount of New Senior Secured Notes; (iii) its Ratable Share of 80.5% of the New Parent Stock, subject to dilution through the exercise of options issuable pursuant to the New Long Term Incentive Plan; and (iv) the release set forth in Sections 7.4 and 7.5 of the Plan.

(c) Each holder of an Allowed Prepetition Lender Claim shall be entitled to retain all amounts paid to it or on its behalf as adequate protection and Reorganized 360 shall continue to pay the reasonable out of pocket professional fees of the holders of the Allowed Petition Lender Claims after the Confirmation Date solely with respect to matters

relating directly to the Plan (including any distributions thereunder or consummation thereof) or the Chapter 11 Cases in accordance with the Cash Collateral Order.

(d) Distributions of Cash to be made by Reorganized 360 to or for the benefit of the holders of Allowed Prepetition Lender Claims pursuant to the Plan shall be made by wire transfer of immediately available funds denominated in Dollars to the Prepetition Agent in accordance with wire transfer instructions to be provided by the Prepetition Agent to Reorganized 360.

(e) Distributions of New Parent Stock and New Senior Secured Notes to be made by Reorganized 360 to or for the benefit of the holders of Allowed Prepetition Lender Claims pursuant to the Plan shall be delivered to the Prepetition Agent in accordance with instructions to be provided by the Prepetition Agent to Reorganized 360.

(f) Nothing contained in the Disclosure Statement, the Plan (including, without limitation, Sections 7.1, 7.2, 7.4 and 7.5 of the Plan) or the Confirmation Order, shall be deemed or construed, directly or indirectly, by implication or otherwise, to discharge, affect, limit, reduce, settle, compromise, release or otherwise impair (i) the obligations of any guarantor or any other obligor (other than the Debtors and the CCAA Plan Debtors) under, in respect of, or in connection with, the Prepetition Credit Agreement, the Security Documents (as defined in the Prepetition Credit Agreement) or the Guarantee Agreements (as defined in the Prepetition Credit Agreement) or (ii) any mortgages, deeds of trust, liens or other security interests against the property of any such guarantor or any such other obligor (other than the Debtors and the CCAA Plan Debtors) securing such obligations.

(g) Notwithstanding anything to the contrary in the Plan, including, Sections 7.1 or 7.2 of the Plan, or the Confirmation Order, \$215,000,000 in aggregate Allowed Class 4 Claims (the "Non-Discharged Class 4 Claims") shall not be discharged under the Plan, the Confirmation Order, or otherwise. From and after the Effective Date, the Non-Discharged Class 4 Claims: (i) shall be evidenced by the New Senior Secured Notes; and (ii) shall constitute the legal, valid and binding obligations of the Reorganized Debtors, enforceable against the Reorganized Debtors in accordance with the terms of the New Senior Secured Notes (as such New Senior Secured Notes may be amended, supplemented or otherwise modified from time to time). The Reorganized Debtors' obligations under the New Senior Secured Notes shall not be subject to challenge, avoidance, subordination or recharacterization under any applicable fraudulent conveyance, fraudulent transfer or similar law. In the event that payment of a portion of the Class 4 Cash Distribution is deferred in accordance with Section 3.4(b) of the Plan, the amount deferred may, at the option of the Required Class 4 Holders, be designated as additional Non-Discharged Class 4 Claims.

(h) Notwithstanding anything to the contrary in the Plan, including, Sections 7.1 or 7.2 of the Plan, or the Confirmation Order, none of the Existing Security shall be released under the Plan, the Confirmation Order or otherwise. From and after the Effective Date: (i) the Existing Security, together with any new security instruments or documents that may be reasonably requested by the Prepetition Agent and delivered by the Reorganized Debtors ("Additional Security"), shall secure the obligations of the

Reorganized Debtors under (or with respect to) the New Senior Secured Notes; (ii) the Existing Security and any Additional Security shall constitute, legal, valid, binding and perfected Liens, which Liens shall be enforceable against the assets and properties of the Reorganized Debtors in accordance with their terms (as such Liens may be amended, supplemented or otherwise modified from time to time); and: (x) in the case of the Existing Security, shall be senior in priority to all other Liens against such assets and property except any valid, perfected, and unavoidable prepetition Liens that were senior in priority to the Existing Security and were not released or discharged by the Plan; and (y) in the case of the Additional Security, shall have such priority as determined by applicable nonbankruptcy law; and (iii) neither the Prepetition Agent, any holder of a Prepetition Lender Claim nor any other Person shall be required to take any actions to perfect or re-perfect the Existing Security or any Additional Security, other than any actions that are required generally under applicable laws to maintain perfection of Liens. The Existing Security and any Additional Security shall not be subject to challenge, avoidance, subordination or recharacterization under any applicable fraudulent conveyance, fraudulent transfer, or similar law.

3.5. Class 5 – Nonconsensual Lien Claims. Class 5 is impaired. Each Claim in Class 5 shall be treated as a separate subclass for voting and distribution purposes under the Plan.

On the later of the Effective Date and 10 Business Days after the date on which a Class 5 Claim becomes an Allowed Claim, each such Claim shall be paid in full as follows:

(a) Amount. The amount of an Allowed Class 5 Claim shall be the lesser of: (i) the value (as of the Confirmation Date) of the collateral securing such Allowed Class 5 Claim; and (ii) the sum of: (A) the amount (as of the Petition Date) of the Debtors' obligation to the holder of such Allowed Class 5 Claim secured by a valid, binding, perfected, and enforceable Nonconsensual Lien; plus (B) interest on such amount (exclusive of interest on any prepetition interest included therein) from the Petition Date through the Confirmation Date at 5½% per annum; plus (C) reasonable attorney's fees, if any, due to the holder of such Allowed Class 5 Claim by contract or statute.

Resolution of Allowed Amount. The amount of each such Allowed Claim shall be as listed on Schedule 3.5(a) hereto, assuming a Confirmation Date of August 31, 2002. If prior to the deadline fixed by the Bankruptcy Court in the Disclosure Statement Order, a holder of a Class 5 Claim fails to file with the Bankruptcy Court and serve on the attorneys for the Debtors an objection to the amount(s) set forth in such Schedule 3.5(a) respecting such Claim, then such holder shall be forever barred from asserting any Claims against the Debtors exceeding the proposed allowed amount of such Claim. If a timely objection to an amount listed on Schedule 3.5(a) to the Plan is served and filed by a holder of a Class 5 Claim, then such holder's Claim shall be deemed to be a Disputed Claim to be resolved in accordance with the Plan.

(b) Term. 8 years from the Effective Date.

(c) Amortization. Based on 20 years, payable quarterly in arrears, with any principal remaining outstanding due as a lump sum on maturity.

(d) Interest Rate. 5½% per annum, payable quarterly in arrears; provided, however, that interest accrued after the Confirmation Date but otherwise due before the Effective Date shall not be due until the end of the first quarter ending after the Effective Date.

(e) Prepayment. The Claim shall be prepayable without premium or penalty in whole or in part at any time prior to maturity.

(f) Collateral.

- (1) As of the Effective Date, the Debtors' obligations to make the Plan payments on Nonconsensual Lien Claims shall be secured by the applicable Nonconsensual Lienholder's collateral to the same extent as existed on the Confirmation Date and shall remain so secured until the applicable Nonconsensual Lien Claim has been satisfied to the extent provided for by the Plan.
- (2) To the extent, if any, that prior to the Confirmation Date or in the Confirmation Order, the collateral securing any of the Nonconsensual Lien Claims was transferred to one or more segregated Cash accounts by order of the Bankruptcy Court, then:
 - (a) such Nonconsensual Lien Claims shall continue to be secured by such segregated cash accounts to the same extent as provided in the applicable order; and
 - (b) distributions on account of the applicable Nonconsensual Lien Claim shall be paid out of the applicable segregated account.
- (3) Within twenty (20) days after satisfaction of any Nonconsensual Lien Claim pursuant to the terms of this Section 3.5, the holder of such Nonconsensual Lien Claim shall cause any liens securing such Claim to be released.

(g) Documentation. As a condition to receipt of any payments under the Plan, Nonconsensual Lienholders shall be required to execute any documents that the Debtors determine to be reasonably necessary or appropriate to evidence or implement any provision of this Section 3.5 or any other relevant provision of the Plan or the Confirmation Order.

(h) Lump Sum Alternative. The Debtors or Reorganized Debtors, as applicable, shall be authorized to satisfy any Allowed Nonconsensual Lien Claim in Cash with a discounted lump sum payment; provided, however, that (i) any such payments (or a series of related payments) of \$1,000,000 or more in the aggregate shall be on notice to the Prepetition Agent and (ii) if the Prepetition Agent objects to such payment (or such series of related payments) within the notice period applicable thereto, then Bankruptcy Court approval shall be required prior to the making of such payment (or such series of related

payments). Subject to the occurrence of the Effective Date, each holder of an Allowed Nonconsensual Lien Claim may elect, on its ballot for voting on the Plan, to receive a single lump sum payment equal to 50% of such Allowed Claim in lieu of any other distribution on such Allowed Claim under the Plan. Such election shall apply to such holder's entire Allowed Class 5 Claim. Any Cash settlement payable on a Nonconsensual Lien Claim secured by a segregated Cash account shall be paid from such account.

(i) Debtors' Option to Return Collateral. In lieu of the treatment described in subsections (a) through (h) above, the Debtors may satisfy any Allowed Class 5 Claim by transferring title to the property securing such Allowed Class 5 Claim to the holder of such Claim. Within thirty (30) days after mailing by the Debtors or Reorganized Debtors of notice of the election of this option, the holder of an Allowed Class 5 Claim shall be entitled to amend in writing or file a proof of claim for any unsecured deficiency Claim respecting such Claim (to the extent such holder has recourse to a Debtor respecting such Class 5 Claim, and provided the holder has timely filed a proof of claim respecting such Class 5 Claim or whose Class 5 Claim was listed in the Schedules as nondisputed, noncontingent, and liquidated). To the extent, if any, that any such unsecured deficiency Claim is or becomes an Allowed Claim, then such deficiency Claim shall be treated as an Allowed Class 7 Claim.

3.6. **Class 6 – Other Secured Claims.** Class 6 is not impaired, except for the Impaired Class 6 Claims (see Plan Schedule 1.42). Each Claim in Class 6 shall be treated as a separate subclass for voting and distribution purposes under the Plan.

(a) Election of Alternative Treatments. At the election of Reorganized Debtors, on or before the later of the Effective Date and 10 Business Days after the date on which a Class 6 Claim becomes an Allowed Claim, each such Claim, except for Impaired Class 6 Claims, shall be paid in full by either:

- (1) reinstating the Claim, that is, leaving unaltered the legal, equitable, and contractual rights respecting such Claim in accordance with section 1124 of the Bankruptcy Code, including: (A) curing all pre- and postpetition defaults other than defaults relating to the insolvency or financial condition of the relevant Debtor or its status as a debtor under the Bankruptcy Code; and (B) reinstating the maturity date of the Claim;
- (2) paying such Claim in full, in Cash, in an amount equal to such Allowed Class 6 Claim; or
- (3) transferring title to the property securing such Allowed Class 6 Claim to the holder of such Claim. Within thirty (30) days after mailing by the Debtors or Reorganized Debtors of notice of the election of this option (3), the holder of an Allowed Class 6 Claim shall be entitled to amend in writing or file a proof of claim for any unsecured deficiency Claim respecting such Claim (to the extent such holder has recourse to a Debtor respecting such Class 6 Claim, and provided the holder has timely filed a proof of claim respecting

such Class 6 Claim or whose Class 6 Claim was listed in the Schedules as nondisputed, noncontingent, and liquidated). To the extent, if any, that any such unsecured deficiency Claim is or becomes an Allowed Claim, then such Allowed Claim shall be treated as an Allowed Class 7 Claim.

(b) Impaired Class 6 Claims. Notwithstanding anything to the contrary contained in this Section 3.6, each Impaired Class 6 Claim shall be paid in full as follows:

(i) Term. 10 years from the Effective Date.

(ii) Amortization. Based on 20 years, payable quarterly in arrears, with any principal remaining outstanding due as a lump sum on maturity.

(iii) Interest Rate. 5½% per annum, payable quarterly in arrears; provided, however, that interest accrued after the Confirmation Date but otherwise due before the Effective Date shall not be due until the end of the first quarter ending after the Effective Date.

(iv) Prepayment. The Claim shall be prepayable without premium or penalty in whole or in part at any time prior to maturity.

(v) Collateral. As of the Effective Date, the Debtors' obligations to make the Plan payments on Impaired Class 6 Claims shall be secured by the applicable Class 6 Claim holder's existing collateral to the same extent as existed prior to the Confirmation Date.

(vi) Documentation. As a condition to receipt of any payments under the Plan, holders of Impaired Class 6 Claims shall be required to execute any documents that the Debtors determine to be reasonably necessary or appropriate to evidence or implement any provision of this Section 3.6 or any other relevant provision of the Plan or the Confirmation Order.

(vii) Lump Sum Alternative. The Debtors or Reorganized Debtors, as applicable, shall be authorized to satisfy any Allowed Impaired Class 6 Claim in Cash with a discounted lump sum payment; provided, however, that: (i) any such payments (or a series of related payments) of \$1,000,000 or more in the aggregate shall be on notice to the Prepetition Agent; and (ii) if the Prepetition Agent objects to such payment (or such series of related payments) within the notice period applicable thereto, then Bankruptcy Court approval shall be required prior to the making of such payment (or such series of related payments). Subject to the occurrence of the Effective Date, each holder of an Allowed Impaired Class 6 Claim may elect, on it's ballot for voting on the Plan, to receive a single lump sum payment equal to 50% of such Allowed Claim in lieu of any other distribution on such Allowed Claim under the Plan. Such election shall apply to such holder's entire Allowed Impaired Class 6 Claim.

(c) Resolution of Allowed Amounts. Schedule 3.6(c) to the Plan lists: (i) each Class 6 Claim; (ii) the amount in which each such Claim is proposed to be allowed; and (iii) the additional cure amount, if any, proposed to be paid if the Claim is to

be reinstated. If prior to the deadline fixed by the Bankruptcy Court in the Disclosure Statement Order, a holder of a Class 6 Claim fails to file with the Bankruptcy Court and serve on the attorneys for the Debtors an objection to the amount(s) set forth in such Schedule 3.6(c) respecting such Claim, then such holder shall be forever barred from asserting any Claims against the Debtors exceeding the proposed Allowed amount of such Claim, and Reorganized Debtors shall be entitled to rely upon such amount(s) in selecting the treatment for the Claim under this section. If a timely objection to an amount listed on Schedule 3.6(c) to the Plan is served and filed by a holder of a Class 6 Claim, then such holder's Claim shall be deemed to be a Disputed Claim to be resolved in accordance with the Plan.

(d) Treatment of Offset Rights. To the extent a Class 6 Claim is partially an Allowed Secured Claim based on an offset right and partially an Allowed Claim of another type, such Claim shall be deemed to (x) have been setoff only to the extent of the allowed amount of the allowed fixed, liquidated, nondisputed, non-contingent Claim owing from the relevant Debtor and (y) be a Claim classified in another relevant Class for any excess of such Claim over the amount set off. If a Claim is fully an Allowed Secured Claim based on an offset right, then (A) the allowance of such Claim shall not affect any obligations or liabilities due and payable (at such time) to the relevant Debtor that are in an amount in excess of the amount offset and the payment of all amounts due and owing as of the Effective Date to such Debtor and (B) the turnover of any property of such Debtor held by such claimant on account of any unliquidated, disputed or contingent right of setoff shall be a precondition to the allowance of such Claim.

3.7. **Class 7 – General Unsecured Claims.** Class 7 is impaired.

(a) **Distributions.** On the later of the applicable Distribution Date and ten Business Days after the date on which a Class 7 Claim becomes an Allowed Claim, each holder of an Allowed General Unsecured Claim shall receive its Ratable Share of: (i) 10% of the New Parent Stock; and (ii) the Committee Percentage of the Net Preference Recoveries available for distribution on such Distribution Date after an appropriate reserve to cover the already incurred and anticipated future fees and expenses to be paid from the Preference Account; provided, however, that instead of such New Parent Stock, Allowed Class 7 Claims subject to the Lump Sum Election shall receive the applicable Cash payment on the later of the Initial Distribution Date and ten Business Days after the date on which a Class 7 Claim becomes an Allowed Claim. Subsequent distributions shall be made on any applicable Interim Distribution Date or the Final Distribution Date for Class 7.

(b) **Lump Sum Cash Payment Election.** Subject to the occurrence of the Effective Date, the allowance of its Claim, and the funding limitations described in Subsection (c) below, each holder of a Class 7 Claim may elect, on such holder's ballot for voting on the Plan, to receive a single lump sum Cash payment of \$6.67 per share of New Parent Stock (based on a \$100 million ascribed value for the New Parent Stock of Reorganized 360 and 15 million shares of New Parent Stock) in lieu of the New Parent Stock distributions described above and in full satisfaction of any and all distributions of New Parent Stock to be made under the Plan for such Allowed Class 7 Claim. Each holder of an Allowed Class 7 Claim of \$100,000 or less shall be deemed to have made the Lump

Sum Election. The Lump Sum Election shall apply to such holder's entire Allowed Class 7 Claim; *provided, however*, that holders of Class 7 Claims in excess of \$100,000 who make the Lump Sum Election may nonetheless receive only a Ratable distribution of Cash plus a partial distribution of New Parent Stock to the extent that the aggregate dollar amount of Class 7 Claims for which the Lump Sum Election is made or deemed to have been made exceeds \$5 million (or such higher amount as the Funding Source (as defined below) may agree to fund).

(c) **Funding of Lump Sum Election Payments.** Payments to satisfy the Lump Sum Election shall be funded by Reorganized 360 or Reorganized 360's designee (in either case, the "Funding Source") in an aggregate amount equal to \$5,000,000 (or such higher amount as the Funding Source may agree to fund; provided, however, that if the Funding Source is Reorganized 360, then it shall not fund or agree to any such higher amount without the consent of the Prepetition Agent). To the extent, if any, such amount is insufficient to satisfy all Allowed Class 7 Claims subject to the election, all such Allowed Claims of \$100,000 or less shall be satisfied first and the remaining funds shall be allocated Ratably among the other Claims subject to the election with: (i) the holders of all such Allowed Claims retaining any New Parent Stock not so satisfied pursuant to the Lump Sum Election; and (ii) any holder of a Disputed Class 7 Claim making the Lump Sum Election to be allocated its Ratable Share based on the amount of the Allowed Class 7 Claim to which the Debtors in good faith believe the holder of such Disputed Claim should be entitled or based on an order of the Bankruptcy Court on a motion by a holder of a Disputed Class 7 Claim challenging the Debtors' determination of such holder's Ratable Share, and as to which motion such holder shall have the burden to establish there was no reasonable basis therefor. The New Parent Stock allocable to any Claim subject to the Lump Sum Election shall be delivered to the Funding Source. If a holder of a Class 7 Disputed Claim makes, or is deemed to have made, the Lump Sum Election, then the lump sum payment allocable to such Claim shall be held in escrow pending resolution of such Claim and paid once and to the extent such Claim becomes an Allowed Class 7 Claim, with any interest earned on such escrow to be paid to the Debtors to the extent the Disputed Claim becomes an Allowed Class 7 Claim and to the Funding Source to the extent the Disputed Claim is disallowed.

(d) **Prohibition on Multiple Recoveries.** As a component of the settlements embodied in the Plan, Class 7 Claims against all Debtors shall be aggregated for purposes of voting on and distribution under the Plan, but for no other purpose, and the Debtors' estates shall not be substantively consolidated. Accordingly, each holder of a Class 7 Claim shall be entitled to only one Class 7 Claim against and one recovery from the Debtors respecting the obligation or liability of any of the Debtors regardless of any legal theory that could make multiple Debtors liable for such obligation or liability. Duplicate Claims against multiple Debtors respecting a single obligation or liability shall be disallowed hereby so that only a single obligation or liability remains. Further, to the extent, if any, that a creditor correctly asserts that one or more of the Debtors and one or more of the CCAA Plan Debtors both should be otherwise liable for a single claim, then: (i) such claim shall be allocated exclusively to the entity contractually or otherwise primarily obligated to satisfy such claim; or (ii) if no such entity exists, then to the extent at least one of the Debtors and at least one of the CCAA Plan Debtors otherwise would be jointly liable for any claim, such claim shall be allocated between the applicable Debtors

and CCAA Plan Debtors based on their respective relative benefit from the transaction or occurrence giving rise to such claim and/or their respective relative degree of culpability, if any, for an event or act giving rise to such claim, as applicable.

Any allocation made pursuant to clauses (i) and (ii) above shall be made according to the following procedure: (a) based upon the criteria enumerated above, the Reorganized Debtors shall provide a recommendation to the Committee and to the monitor under the CCAA Plan as to how a particular Claim should be allocated; (b) if the Committee and the CCAA monitor agree upon the allocation of a particular claim, then such agreement shall be determinative of such allocation, subject to the right of the affected creditor to seek judicial review of such determination within ten days of receipt of notice of such determination; and (c) if the Committee and the CCAA monitor are unable to agree as to allocation of a particular claim, then any allocation of such claim to either the CCAA Plan Debtors or the Debtors shall be made by judicial determination.

(e) **Subordinated Claims.** Any Claim subordinated as provided in sections 510(b) or (c) of the Bankruptcy Code or otherwise to Class 7 Claims shall be provisionally in Class 7, but receive no Distributions on account of such Claim.

3.8. **Class 8 – Intercompany Claims**

Class 8 is impaired. Holders of Allowed Intercompany Claims shall not receive a Distribution on account of such Claims pursuant to the Plan. Allowed Intercompany Claims of the CCAA Plan Debtors or Nondebtor Affiliates shall be contributed to the capital of Holdings USA. Thereafter, Allowed Intercompany Claims held by other Debtors shall be cancelled. Notwithstanding the treatment of Class 8 Claims provided for herein, each of the holders of Class 8 Claims shall be deemed to have accepted the Plan.

3.9. **Class 9 – Interests**

Class 9 is impaired. Holders of Allowed Interests are not entitled to and shall not receive a Distribution on account of such Interests pursuant to the Plan. Instead, such Interests shall be retained; provided, however, that in the event necessary to obtain confirmation of the Plan under section 1129(b) of the Bankruptcy Code, then such Interests shall be cancelled and replaced by matching new common stock of the applicable Debtors.

ARTICLE IV.

MEANS OF IMPLEMENTATION OF THE PLAN

4.1. **New Parent Stock**

(a) **Issuance.** The New Parent Stock shall be issued by the New Parent and be a single class. Holdings USA shall issue shares of its stock to the New Parent in exchange for the shares of New Parent Stock to be distributed pursuant to the Plan.

(b) **Non-Voting Stock.** The certificate of incorporation and by-laws of each of the Reorganized Debtors shall, inter alia, prohibit the issuance of nonvoting stock to the extent required by section 1123(a) of the Bankruptcy Code.

(c) **Exemption From Securities Laws.** The Confirmation Order will provide that the offer and sale of the New Parent Stock and the New Senior Secured Notes that are issued pursuant to the Plan, including, without limitation, New Parent Stock issued pursuant to the New Long Term Incentive Plan, are exempt from registration pursuant to section 1145(a) of the Bankruptcy Code and that such New Parent Stock and New Senior Secured Notes may be resold by the holders thereof without restriction, except to the extent that any such holder is deemed to be an "underwriter" as defined in section 1145(b)(1) of the Bankruptcy Code with respect to the New Parent Stock or the New Senior Secured Notes.

4.2. Corporate Actions

(a) **Corporate Powers.** The Debtors shall continue to exist as subsidiaries of the New Parent after the Effective Date, with all of the powers of corporations under applicable law. After the Effective Date, each Reorganized Debtor may amend or modify its certificate of incorporation and by-laws in any manner consistent with the Plan, as permitted under applicable law and/or such certificate of incorporation and by-laws.

(b) **Employee Issues.** As of the Effective Date, the Reorganized Debtors will have authority, as determined by New Parent's board of directors, to: (a) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with their active directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active and retired employees; provided, however, that the Debtors' severance policy approved pursuant to the order of the Bankruptcy Court, dated September 5, 2001, shall remain in place for at least one year after the Effective Date unless replaced by a policy no less favorable to officers, directors, and employees.

(c) **New Long Term Incentive Plan.** Immediately prior to the Effective Date, the Reorganized Debtors shall adopt and implement the New Long Term Incentive Plan without the need for any further corporate action in connection therewith.

(d) **Authorization.** The adoption of new or amended and restated certificates of incorporation and by-laws or similar constituent documents for the Reorganized Debtors; the initial slate of directors and officers for the Reorganized Debtors; the distribution of Cash pursuant to the Plan; the issuance and distribution of New Parent Stock and New Senior Secured Notes pursuant to the Plan; the adoption, execution, delivery and implementation of all contracts, leases, instruments, notes, guarantees, releases and other agreements or documents related to any of the foregoing; the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs, retirement income plans, welfare benefit plans and other employee plans and related agreements, including the New Long Term Incentive Plan; and the other matters provided for under the Plan involving corporate action to be

taken by or required of any Debtor or Reorganized Debtor will occur and be effective as of the Effective Date, and will be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of any of the Debtors.

4.3. Pursuit of Preference Actions.

(a) **Allocation of Proceeds.** Holders of Allowed Class 7 Claims will receive the Committee Recovery Percentage and the Reorganized Debtors will receive the remainder of Net Preference Recoveries from Committee Claims; *provided, however*, that solely if and to the extent the Debtors fail to provide the \$1,000,000 as and when provided in Subsection 4.3(d) below, the Debtors' share shall be setoff by such unfunded amount and such setoff funds shall be applied to satisfy the Debtors' related obligation under Subsection 4.3(d). Net Preference Recoveries from Carve Out Claims that may be incorporated in any broader settlement with the preference recipient shall belong entirely to the Debtors, provided that the Debtors shall represent to the Committee that any such settlement was negotiated in good faith. Net Preference Recoveries from Carve Out Claims that are resolved individually, rather than as part of a broader settlement, shall be split on the same basis (*i.e.*, holders of Allowed Class 7 Claims shall receive the Committee Recovery Percentage, and the Reorganized Debtors shall receive the remainder).

(b) Prosecution of Preference Claims.

- (1) The Reorganized Debtors shall control and retain 100% of recoveries on all claims against any member of the Ledcor Group, Netrail, Inc., or Debtor Professionals, including Preference Claims against any of the foregoing. Any settlement of claims against the Ledcor Group shall require the waiver of all General Unsecured Claims against the Debtors asserted by each member of the Ledcor Group or, absent such waiver, an alternative resolution satisfactory to the Committee. Absent a settlement of the Debtors' Preference Claims against the Ledcor Group on or before April 30, 2003, such claims shall be treated in all respects as Committee Claims (and all related Committee fees and expenses shall be deemed to be Committee Preference Fees), except that the first \$500,000 of Net Preference Recoveries on such claims against the Ledcor Group shall be paid to the Reorganized Debtors (or applied against the \$1 million payable by the Reorganized Debtors under Subsection 4.3(d) below) before the split of Net Preference Recoveries (based upon the Committee Recovery Percentage) from Committee Claims applies.
- (2) The Committee shall be authorized and have the exclusive right to prosecute all Committee Claims on behalf of the Debtors' estates without further order of the Bankruptcy Court. The Committee shall deposit all proceeds from the prosecution or settlement of Committee Claims into the Preference Account. The Committee

also shall be responsible for resolution of any General Unsecured Claims asserted by targets of Committee Claims. Any Committee Claim regarding which the potential defendant has asserted a General Unsecured Claim against the Debtors and with respect to which: (a) the Committee has not filed an adversary proceeding or a motion objecting to the prepetition claim of the target of the Committee Claim by 60 days after the Effective Date, or such later date as may be agreed to between the Committee and the Debtors, or ordered by the Court for cause shown; or (b) as to which on or before such date the Committee has informed the Reorganized Debtors in writing that the Committee does not intend to pursue the Committee Claim, shall revert (together with the related claims resolution responsibility) to the Reorganized Debtors' control and thereafter be deemed to be a Carve Out Claim. On or before the Effective Date, the Debtors shall provide the Committee with a schedule of potential "books and records" objections related to Committee Claims.

(c) The Preference Account. No distributions from the Preference Account shall be made unless and until the Reorganized Debtors first have been paid from such account an amount equal to all outstanding Requested Debtor Fees (or any such fees that are disputed have been reserved for). Subject only to the limited right of set-off provided herein, the Reorganized Debtors shall receive their share of Net Preference Recoveries from the Preference Account on or before the date that any of the Committee Recovery Percentage of the Net Preference Recoveries are distributed to holders of Allowed Class 7 Claims. The Committee promptly shall provide the Reorganized Debtors with copies of the monthly statements for the Preference Account together with a schedule of all deposits into and withdrawals from the Preference Account. The Reorganized Debtors shall have the right to audit the Preference Account, at the Reorganized Debtors' expense, upon reasonable notice. Either the Committee or the Reorganized Debtors shall have the right to object in the Bankruptcy Court on the basis that the Committee Preference Fees or Requested Debtor Fees are unreasonable.

(d) Debtors' Contribution. The Reorganized Debtors shall provide \$1,000,000 to cover Committee Preference Fees or as a contribution to recoveries on Committee Claims. For Committee Preference Fees incurred and billed during the period from the Effective Date until July 1, 2003, upon receipt of such monthly bills the Reorganized Debtors promptly shall deposit an amount sufficient to pay such fees into the Preference Account so long as the aggregate amount paid by the Reorganized Debtors for Committee Preference Fees does not exceed \$1,000,000. As soon as practicable after July 1, 2003, the Debtors will deposit into the Preference Account, as a contribution to the Preference Account, an amount equal to \$1,000,000 less the sum of: (a) the aggregate amount paid by the Debtors for Committee Preference Fees for the period from July 1, 2002 to June 30, 2003; plus (b) any unreimbursed Requested Debtor Fees for such period. Any additional funding to cover Committee Preference Fees shall be paid only from net recoveries on Committee Claims.

(e) Committee Reporting Requirements. Every two weeks for the period through June 30, 2003, and monthly thereafter, the Committee shall provide the Reorganized Debtors with a written grid/chart that lists any settlement proposal made or received by the Committee respecting every Committee Claim. Upon request, the Committee promptly shall provide the Reorganized Debtors with a copy of any such written settlement proposal. The Reorganized Debtors shall keep all such information confidential and all such information shall be deemed shared pursuant to a joint defense agreement with the Committee so as to preserve the confidential nature of such information and the attorney-client and attorney work product privileges with respect to such information.

(f) Reorganized Debtors Reporting Requirements. Each month, the Reorganized Debtors shall provide the Committee with a written grid/chart that lists any settlement proposal made or received by the Reorganized Debtors respecting every Carve Out Claim. Upon request, the Reorganized Debtors promptly shall provide the Committee with a copy of any such written settlement proposal. The Committee shall keep all such information confidential and all such information shall be deemed shared pursuant to a joint defense agreement with the Reorganized Debtors so as to preserve the confidential nature of such information and the attorney-client and attorney work product privileges with respect to such information.

(g) Cooperation. The Debtors and Reorganized Debtors shall use their reasonable best efforts to timely cooperate with the Committee in its analysis, investigation, and pursuit of Committee Claims.

4.4. **Postconfirmation Operations.**

As of the Effective Date, the Reorganized Debtors may operate their businesses and use, acquire and settle and compromise claims or interests without supervision of the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan and Confirmation Order, including Section 4.3 hereof. Without limiting the foregoing, the Reorganized Debtors may pay the charges they incur for professional fees, disbursements, expenses or related support services after the Confirmation Date (including any Professional Fee Claims) without any application to the Court.

4.5. **Directors of Reorganized Debtors**

(a) Initial Directors. On the Effective Date, the authority, power and incumbency of the persons then acting as directors of the Debtors shall be terminated and such directors shall be deemed to have resigned and the following three individuals shall become the directors of each of the Debtors with responsibility for the management, control and operations of each Reorganized Debtor:

- (1) Greg Maffei
- (2) Vanessa Wittman
- (3) Lin Gentemann

(b) Term. Each director will serve from and after the Effective Date until his or her successor is duly elected and qualified or until their earlier death, resignation or removal in accordance with the terms of the certificates of incorporation and by-laws or similar constituent documents of the applicable Reorganized Debtor and applicable state law.

4.6. Debtors' Retention of Causes of Action

(a) Except as provided in Sections 4.3 above and 7.4 and 7.5(b) below, on the Effective Date, all rights, claims, and causes of action of the Debtors pursuant to: (a) sections 541, 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code; and (b) all other claims and causes of action of the Debtors against any Person (other than rights, claims and causes of action expressly released by the Debtors in the Plan or pursuant to a Final Order) shall be preserved and become property of the Reorganized Debtors. Except as provided in Section 4.3 above, on the Effective Date, the Reorganized Debtors shall be deemed the representative of their respective estates under section 1123(b) of the Bankruptcy Code and will be authorized and shall have the power to commence and prosecute any and all causes of action (other than rights, claims and causes of action expressly released by the Debtors in the Plan or pursuant to a Final Order) that could have been asserted by any of the Debtors respectively. ALL SUCH ACTIONS SHALL SURVIVE CONFIRMATION AND THE COMMENCEMENT OR PROSECUTION OF SUCH ACTIONS SHALL NOT BE BARRED OR LIMITED BY ANY ESTOPPEL, WHETHER JUDICIAL, EQUITABLE, OR OTHERWISE.

(b) Except as provided in Sections 4.3 above and 7.5(b) below, on and after the Effective Date, the Reorganized Debtors may settle any claims of the Debtors pursuant to sections 541, 542, 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code held against: (i) employees of the Debtors or their Affiliates or against any Debtor Professionals, without the need for Court approval; provided however, that the Debtors shall provide at least 10 days' prior written notice to the Committee of any such settlement, and if the Committee objects within such 10 day period, such settlement may not be implemented without Committee consent or an order of the Court; and (ii) any of the Debtors or the CCAA Plan Debtors, and any entity that is a wholly owned subsidiary of any of the Debtors or the CCAA Plan Debtors.

4.7. Effectuating Documents and Further Transactions

Each Debtor and Reorganized Debtor shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, releases, and other agreements and take such other action as may be necessary to effectuate and further evidence the terms and conditions of the Plan.

4.8. Withdrawal of the Plan

The Debtors reserve the right to withdraw or amend the Plan prior to the Confirmation Date. If the Debtors withdraw or amend the Plan, or if confirmation of the Plan does not occur, then the Plan and related Disclosure Statement shall be null and void, and nothing contained therein shall: (i) constitute a waiver or release of any Claims by or against, liens in property of, the Debtors; or (ii) serve as an admission of fact or conclusion

of law or otherwise prejudice in any manner the rights of the Debtors in any further proceedings involving the Debtors.

4.9. Value Creation Pool

The Value Creation Pool authorized pursuant to an order of the Bankruptcy Court, dated December 20, 2001, shall be \$1,750,000 and distributions thereunder shall be payable on the Effective Date.

4.10. Registration Rights Agreement

On and after the Effective Date, New Parent, recipients of the New Parent Stock under the Plan, and the participants in the New Long Term Incentive Plan shall be bound by and have the benefit of the provisions of the Registration Rights Agreement, if any such agreement is entered into by New Parent and only to the extent that the provisions of such agreement state that such recipients and participants are bound and benefited thereby.

ARTICLE V.

CLAIMS RESOLUTION AND DISTRIBUTIONS

5.1. Distributions to Holders of Class 7 Claims

(a) **Initial Distributions.** On the Initial Distribution Date or as soon as reasonably practicable thereafter, the Reorganized Debtors shall distribute the New Parent Stock (or cash for Allowed Class 7 Claims subject to the Lump Sum Election) and Net Preference Recoveries allocable to Allowed Claims held by members of Class 7. For the purpose of calculating the amount of New Parent Stock and Net Preference Recoveries to be distributed to holders of Allowed Claims in Class 7 on the Initial Distribution Date, all Disputed Claims in Class 7 will be treated as though such Claims will be Allowed Claims in the amounts asserted or as estimated by the Court pursuant to section 502(c) of the Bankruptcy Code, as applicable.

(b) Upon any Interim Distribution Date, the Reorganized Debtors may make interim Distributions of New Parent Stock to holders of Allowed Class 7 Claims pursuant to and consistent with resolutions of Disputed Claims since the date of the immediately prior Distribution.

(c) On the Final Distribution Date or as soon as reasonably practicable thereafter, the Reorganized Debtors shall make the balance of all Distributions required under the Plan.

5.2. Compensation for Services Related to Distributions.

(a) The Reorganized Debtors may employ or contract with other entities to assist it in making the Distributions required by the Plan.

(b) In consideration for providing services related to Distributions, any entity employed by the Reorganized Debtors for such services shall receive from the Reorganized Debtors, without the need for further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments will be made on terms agreed to with Reorganized Debtors and shall not be deducted from distributions to be made pursuant to the Plan to holders of Allowed Claims and Interests.

5.3. Miscellaneous Distribution Provisions

(a) **Method of Cash Distributions.** Except as set forth in Section 3.4(e) of the Plan, any Distribution of Cash to be made by the Reorganized Debtors pursuant to the Plan may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(b) **Fractional Plan Securities.** Notwithstanding any other provision of the Plan, only whole numbers of shares of New Parent Stock will be issued. When any Initial Distribution or Interim Distribution on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Parent Stock that is not a whole number, the actual distribution of shares of such stock only will include the next lower whole number. When any Distribution on a Final Distribution Date on account of an Allowed Claim would otherwise result in the issuance of a number of shares of New Parent Stock that is not a whole number, the actual distribution of shares of such stock will be rounded to the next higher or lower whole number as follows: (i) fractions equal to or greater than $\frac{1}{2}$ will be rounded to the next higher whole number; and (ii) fractions less than $\frac{1}{2}$ will be rounded to the next lower number. The total number of shares of New Parent Stock specified to be distributed to a Class of Claims will be adjusted as necessary to account for the rounding provided for herein. If, as a result of such rounding, the amount of shares of New Parent Stock to be distributed to a particular Class differs from the aggregate number of shares of New Parent Stock specified to be distributed pursuant to the Plan to that Class, the aggregate number of shares of New Parent Stock specified with respect to such Class will be adjusted upward or downward to provide for the appropriate distribution of New Parent Stock, as the case may be. No consideration will be provided in lieu of fractional shares that are rounded down, except that with respect to Initial Distributions or Interim Distributions, such fractional shares shall, with respect to each Allowed Claim, be deemed held by the Reorganized Debtors, in trust, for the benefit of the holder of such Allowed Claim, to be aggregated with the remaining Distribution to be allocated to such holder on the Final Distribution Date.

(c) **Distributions on Non-Business Days.** Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

(d) **No Distribution in Excess of Allowed Amount of Claim.** Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (with non-Cash distributions ascribed the value set forth herein or in the Disclosure Statement) in excess of the allowed amount of

such Claim plus interest at the rate of 5½% per annum. Except as expressly provided herein, no Claim shall be allowed to the extent that it is for postpetition interest.

(e) Disputed Payments. If any dispute arises as to the identity of the holder of an Allowed Claim entitled to receive any Distribution under the Plan, the Reorganized Debtors may retain such Distribution, in trust, until its disposition is determined by a Final Order or written agreement among the interested parties to such dispute and withhold from such Distribution an amount equal to the reasonable fees and costs incurred by the Reorganized Debtors in resolving such dispute.

(f) De Minimis Distributions. No: (i) Cash payment of less than \$100.00; or (ii) distribution of less than ten shares of New Parent Stock, shall be required to be made to the holder of any Claim until the Final Distribution Date for the relevant class.

(g) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Distributions hereunder.

(h) Estimation of Disputed Claims. Unless otherwise provided for herein, upon notice and a hearing, the Court shall estimate the aggregate Face Amount of all Disputed Claims in any Class that are disputed, contingent and/or unliquidated. The aggregate Face Amount of: (a) Disputed Claims and (b) Allowed Claims shall set the maximum allowable aggregate amount of Claims in each relevant Class that is eligible to receive Distributions hereunder. The existence of a Disputed Claim in any Class shall not impair or impede the making of a Distribution to Allowed Claims in the same or other Classes. If the allowed amount of any particular Disputed Claim is reconsidered under section 502(j) of the Bankruptcy Code and Bankruptcy Rule 3008 and/or is allowed in an amount that is greater than the estimated amount of such Claim, or the ultimately allowed amount of all Disputed Claims in a particular Class is greater than the estimated aggregate Face Amount of such Claims, no claimant shall have recourse against the Reorganized Debtors (or any property thereof), any Distribution made to a creditor in any other Class herein, or any Distribution, previously made on account of any Allowed Claim (however, nothing herein shall modify any right of a holder of a reconsidered Claim under the penultimate sentence of section 502(j) of the Bankruptcy Code).

(i) Distribution When a Disputed Claim Becomes an Allowed Claim. Promptly after a Disputed Claim becomes an Allowed Claim, unless a later time is provided for in the Plan or by agreement of the parties, the Reorganized Debtors shall make a Distribution to the holder of such Allowed Claim as if such Claim had been an Allowed Claim on the Effective Date.

(j) Allocation of Distributions. Distributions hereunder made in respect of any Allowed Claim that includes an interest component shall be allocated *pro rata* to the principal and interest components of such Allowed Claim.

(k) Default Remedy. In the event that the Reorganized Debtors default on any payment obligation created under the Plan or the Confirmation Order, the affected

party may give the Reorganized Debtors written notice of such default. If, within 30 days from the date of such notice, the Debtors have not cured such default: (i) if the Chapter 11 Cases remain pending, then the affected party may seek redress from the Bankruptcy Court; or (ii) if the Chapter 11 Cases have been closed, then the affected party may seek redress in any court of competent jurisdiction. Notwithstanding the foregoing, nothing herein or in the Confirmation Order shall be deemed or construed, directly or indirectly, by implication or otherwise to limit, restrict, waive or otherwise modify any right or remedy available to any affected party under any document, instrument or agreement created or entered into pursuant to the Plan or the Confirmation Order, including any right or remedy available under the New Senior Secured Notes to the holders thereof, or in any document, instrument or agreement related thereto.

5.4. Objections to Claims.

Unless otherwise ordered by the Bankruptcy Court, all objections to Claims shall be filed with the Bankruptcy Court and served on the applicable claimant on or prior to one-hundred and eighty (180) days after the later of: (a) the Effective Date; and (b) the date a Claim is filed with the Bankruptcy Court and served on counsel for the Reorganized Debtors and the Committee.

5.5. Settlement of Claims.

Subsequent to the Effective Date, the Reorganized Debtors shall have the authority to resolve any Disputed Claim (except if such Disputed Claim is a Committee Claim) for an Allowed Claim of less than \$1,000,000 without further Court order and subject only to the filing of a notice of such settlement with the Court. Any such settlement shall be binding upon all parties in interest in the Chapter 11 Cases; *provided, however*, that with respect to any settlement that provides for an Allowed Class 7 Claim in excess of \$100,000, the Reorganized Debtors shall provide the Committee with a written explanation of the basis for the proposed settlement and any relevant documentation and such settlement shall be subject to objection by the Committee within ten days of service of such a notice of settlement, in which case such settlement only may be consummated with the Committee's consent or after entry of an order by the Court approving such settlement.

5.6. Unclaimed Property.

After 180 days following the relevant date of a Distribution, the holders of Allowed Claims and Interests otherwise entitled to receive the Distribution on such date shall cease to be entitled thereto, and such Unclaimed Property shall be retained by the Reorganized Debtors, except with respect to any unclaimed Cash distributed from the Preference Account, which shall be redeposited into the Preference Account and distributed as if it were the proceeds of a Committee Claim.

5.7. Voting of Certain New Parent Stock.

New Parent Stock that is Unclaimed Property or held for Disputed Claims shall not be voted at any meeting of the stockholders of New Parent.

5.8. Setoffs and Recoupment.

Reorganized Debtors may, but shall not be required to, set off or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim, claims of any nature that the Debtors or Reorganized Debtors may have against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim against the Debtors or Reorganized Debtors shall constitute a waiver or release by the Debtors or Reorganized Debtors of any claim that the Debtors or Reorganized Debtors may possess against such holder.

Notwithstanding the foregoing, upon request of the Committee, the Debtors shall not unreasonably withhold the waiver of their right to set off or recoup against any Allowed Claim held by a target of a Committee Claim, any claims of the Reorganized Debtors arising after the Effective Date.

5.9. Professional Fee Claims.

The Confirmation Order shall provide for a bar date for the filing of Professional Fee Claims. Notice of entry of the Confirmation Order shall be served on all professionals employed by the Debtors or other parties in interest. Any Person that fails to file a proof of such Claim or application on or before the time and date established in the Confirmation Order shall be forever barred from asserting such Claim against any of the Debtors or their successors or property and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Claim.

ARTICLE VI.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1. Rejection of Executory Contracts and Unexpired Leases.

(a) Leases and Contracts to be Rejected. On the Confirmation Date, but subject to the occurrence of the Effective Date, pursuant to section 365 of the Bankruptcy Code, all of the Debtors' executory contracts and unexpired leases shall be deemed rejected except those that: (i) are the subject of motions to assume or reject pending on the Confirmation Date; (ii) were assumed or rejected before the Confirmation Date; (iii) are listed on Schedule 6.2(a) annexed hereto; (iv) are Underlying Rights; (v) are agreements, obligations, security interests, or similar undertakings that the Debtors list on Schedule 3.6(c) hereto as a Secured Claim of the Debtors, but the Bankruptcy Court later determines are subject to assumption or rejection; and (vi) executory contracts and unexpired leases that the Debtors contend have been terminated by their terms prior to the Confirmation Date due to a breach by the non-Debtor party, but which the Bankruptcy Court later determines are still in effect; provided, however, that the Debtors shall not be required to assume or reject any executory contract or unexpired lease with any party that is a debtor under the Bankruptcy Code or similar insolvency proceeding unless and until such contract or lease has been assumed or rejected by such other party.

(b) Effect of Post-Confirmation Rejection. The entry by the Bankruptcy Court after the Confirmation Date of an order authorizing the rejection of an executory contract or unexpired lease shall result in such rejection being a prepetition breach under sections 365(g) and 502(g) of the Bankruptcy Code.

(c) Deadline to File Rejection Damage Claims. Each Person who is a party to a contract or lease rejected under the Plan must file with the Bankruptcy Court and serve on the Debtors' attorneys and the Committee's attorneys, not later than thirty (30) days after the Confirmation Date, a proof of Claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.

6.2. Assumption of Executory Contracts and Unexpired Leases

(a) Leases and Contracts to be Assumed. As of the Confirmation Date, but subject to the occurrence of the Effective Date, the Debtors shall be deemed to have assumed pursuant to section 365 of the Bankruptcy Code: (i) all executory contracts and unexpired leases listed on Schedule 6.2(a)(1) hereto based on the cure amounts listed in such Schedule; and (ii) all unexpired Underlying Rights agreements to which any of the Debtors are a party (except those on Schedule 6.2(a)(2) hereto, which lists those Underlying Rights agreements to be rejected), with the applicable cure amounts for each Underlying Rights agreement to be assumed pursuant to the Plan to be \$0 unless an amount is listed for such agreement on Schedule 6.2(a)(3) hereto. The listing of a contract or lease on any schedule to the Plan will not constitute an admission by the Debtors that such contract or lease is an executory contract or unexpired lease or that the Debtors have any liability thereunder.

(b) Deadline to Object to Cure Amounts. If prior to the Confirmation Date or such other date as the Bankruptcy Court may fix, a party to an executory contract or unexpired lease listed on Schedule 6.2(a)(1) or to a Underlying Rights agreement fails to file with the Bankruptcy Court and serve upon the attorneys for the Debtors an objection to the applicable cure amount listed on Schedule 6.2(a)(2) or 6.2(a)(3) or \$0 for Underlying Rights not listed on Schedule 6.2(a)(2) or 6.2(a)(3), then such party shall be forever barred from asserting any additional or other amounts against the Debtors respecting such cure amount.

(c) Method of Cure. At the election of the Reorganized Debtors, any monetary defaults under each executory contract and unexpired lease to be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code, in one of the following ways: (a) by payment of the default amount in Cash within thirty (30) days after the Effective Date or such longer period ordered by the Bankruptcy Court; or (b) on such other terms as may be agreed to by the parties to such executory contract or unexpired lease. If a dispute occurs regarding: (x) the cure amount; (y) the ability of the applicable Debtor to provide adequate assurance of future performance under the contract or lease to be assumed; or (z) any other matter pertaining to assumption, then the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption. Notwithstanding any provision of an executory contract or unexpired lease to the contrary,

assumption of any such contract or lease shall not require: (i) the delivery, reaffirmation, or assumption of any new or existing guaranty of a Debtor's obligations under such contract or lease; or (ii) the resolution of any Nonconsensual Lien Claim or Impaired Class 6 Claim whose treatment is provided for in the Plan. Notwithstanding anything herein to the contrary, the Debtors shall retain their right to reject any executory contract or unexpired lease that is subject to a dispute concerning the cure of any defaults until 30 days after such dispute is resolved by a Final Order.

(d) Continuation of Stay. The automatic stay provided under section 362(a) of the Bankruptcy Code shall remain in effect to stay the termination of any contract or lease listed on Schedule 6.2(a)(1), including, without limitation, any surety bonds, until such time as the relative rights and obligations of the parties with respect to any such agreements has been determined by a Final Order.

ARTICLE VII.

EFFECT OF THE PLAN ON CLAIMS AND INTERESTS

7.1. Discharge.

(a) Scope. Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1141(d)(1) of the Bankruptcy Code, entry of the Confirmation Order acts as a discharge, effective as of the Effective Date, of all debts of, Claims against, liens on, and Interests in each of the Debtors, their assets or properties, which debts, Claims, liens, and Interests arose at any time before the entry of the Confirmation Order. The discharge of the Debtors shall be effective as to each Claim, regardless of whether a proof of claim therefore was filed, whether the Claim is an Allowed Claim or whether the holder thereof votes to accept the Plan. On the Effective Date, as to every discharged Claim and Interest, any holder of such Claim or Interest (including, without limitation, any options to purchase stock of any Debtor) shall be precluded from asserting against any Debtor formerly obligated with respect to such Claim or Interest, or against such Debtor's assets or properties, any other or further Claim or Interest based upon any document, instrument, act, omission, transaction or other activity of any kind or nature that occurred before the Confirmation Date. Nothing herein or in the Confirmation Order shall preclude the class action plaintiffs referred to in section 7.5(a) below from pursuing their rights, if any, against 360networks inc. to the extent of available insurance coverage and proceeds thereof.

(b) Injunction. In accordance with section 524 of the Bankruptcy Code, the discharge provided by this section and section 1141 of the Bankruptcy Code, *inter alia*, acts as an injunction against the commencement or continuation of any action, employment of process or act to collect, offset or recover the Claims and Interests discharged hereby.

(c) Release of Liens; Cancellation and Surrender of Instruments, Securities and Other Documentation.

(i) Turnover of Property. Unless a particular Claim is reinstated, each holder of: (A) a Class 6 Secured Claim; (B) a Claim that is purportedly secured (other than Prepetition Lender Claims); or (C) a Class 5 Nonconsensual Lien Claim, shall, on or immediately before the Effective Date: (x) turn over and release to the Debtors any and all property of the relevant Debtor that secures or purportedly secures such Claim; and (y) execute such documents and instruments as such Debtor or Reorganized Debtor requires to evidence such claimant's release of such property.

(ii) Release of Liens, etc. On the Effective Date, except for liens: (a) securing claims in Classes 4, 5, or 6 expressly provided to be retained pursuant to the Plan; or (b) created or expressly provided to be retained pursuant to post-Petition Date agreements previously approved by the Bankruptcy Court, all mortgages, deeds of trust, liens or other security interests against the property of any Debtor will be fully released and discharged, and all of the right, title and interests of any holder such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, will revert to the applicable Reorganized Debtor. Each holder of any Allowed Claim (other than holders of Allowed Prepetition Lender Claims) shall surrender to the Reorganized Debtors any note, instrument, or certified security evidencing such Claim. No Distribution hereunder shall be made to or on behalf of any holder of a Claim unless and until such holder executes and delivers to the relevant Debtor or Reorganized Debtor such release of liens or other items described above, or demonstrates non-availability of such items to the satisfaction of the Reorganized Debtors, including requiring such holder to post a lost instrument or other indemnity bond; provided, however, that holders of Allowed Prepetition Lender Claims shall not be required to tender any notes or instruments evidencing Prepetition Lender Claims to receive their Distribution hereunder, so long as the Distribution may be made to JPMorgan Chase Bank as Administrative Agent. The Reorganized Debtors reasonably may require the holder of any such Claim (other than holders of Prepetition Lender Claims so long as the Distribution may be made to JPMorgan Chase Bank as Administrative Agent) to hold the Reorganized Debtors harmless up to the amount of any Distribution made in respect of such unavailable note, instrument, document, certificate, agreement, certified security or other item evidencing such Claim. Any such holder that fails to execute and deliver such release of liens or other items described above or satisfactorily explain their non-availability to the Reorganized Debtors within 180 days of the Effective Date shall be deemed to have no further Claim against the Debtors, the Reorganized Debtors, or their property in respect of such Claim and shall not participate in any Distribution hereunder, and the Distribution that would otherwise have been made to such holder shall be treated as Unclaimed Property; provided that any such holder of a Disputed Claim shall not be required to execute and deliver such release of liens until the time such Claim is allowed or disallowed. To the extent any holder of a Claim fails to release the relevant liens as required above, the Reorganized Debtors may act as attorney-in-fact, on behalf of the holders of such liens, to provide any releases as may be required in connection with the Plan.

(d) Satisfaction of Claims and Interests in any Debtor. The treatment to be provided for respective Allowed Claims or Interests in each Debtor pursuant to the Plan shall be in full satisfaction, settlement, release and discharge of such respective Claims or Interests.

7.2. Revesting and Vesting

Except as otherwise provided in the Plan, on the Effective Date all property comprising the estates of the Debtors shall vest in the applicable Reorganized Debtor, free and clear of all claims, liens, charges, encumbrances and interests of creditors and equity security holders (except to the extent that such claims, liens, charges, encumbrances and/or interests have been reinstated, or as otherwise expressly provided herein).

7.3. Survival of Certain Indemnification Obligations.

Except as otherwise specifically provided in the Plan, the obligations of the Debtors to indemnify individuals who serve or since the Petition Date served as their respective directors, officers, agents, employees, representatives, and others, including (without limitation) professional persons retained by any Debtor, pursuant to such Debtor's respective certificates of incorporation, by-laws, applicable statutes and preconfirmation agreements in respect of all present and future actions, suits and proceedings against any of such officers, directors, agents, employees, representatives, and others, including (without limitation) professional persons retained by any Debtor (in their capacities as such), based upon any act or omission related to service with, for, or on behalf of any of the Debtors before or after the Petition Date as such obligations were in effect at the time of any such act or omission, shall not be discharged or impaired by confirmation or consummation of the Plan but shall survive unaffected by the reorganization contemplated by the Plan and shall be performed and honored by each respective Debtor or Reorganized Debtor regardless of such confirmation, consummation, and reorganization; *provided, however*, that indemnification obligations based on any act or omission that occurred prior to the Petition Date shall be discharged by consummation of the Plan, but such discharge shall not affect the right of any indemnified Person to: (a) recover under available director and officer insurance coverage (but, for the avoidance of doubt, any claim of such Person to which an insurer may be subrogated is not exempt from discharge); and (b) to use such indemnification obligation as a defense or offset against any claim asserted against such indemnified Person.

7.4. Limitation of Liability.

NEITHER THE DEBTORS, REORGANIZED DEBTORS, THE CCAA PLAN DEBTORS, 360NETWORKS INC., THE COMMITTEE, JP MORGAN CHASE BANK AS ISSUING BANK, ADMINISTRATIVE AGENT AND COLLATERAL AGENT UNDER THE PREPETITION CREDIT AGREEMENT, THE OTHER AGENTS AND THE ARRANGERS UNDER THE PREPETITION CREDIT AGREEMENT, THE STEERING COMMITTEE, AND THE HOLDERS OF PREPETITION LENDER CLAIMS, NOR ANY OF THEIR RESPECTIVE PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, PREDECESSORS, SUCCESSORS, MEMBERS, AGENTS, REPRESENTATIVES, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, ACCOUNTANTS, UNDERWRITERS, APPRAISERS, AND INVESTMENT BANKERS (IN EACH INSTANCE ACTING IN SUCH CAPACITY), SHALL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR RELATED TO THE FORMULATION, NEGOTIATION, PREPARATION, DISSEMINATION, IMPLEMENTATION, CONFIRMATION, OR CONSUMMATION OF THE PLAN, THE DISCLOSURE

STATEMENT, ANY CONTRACT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THE PLAN OR THE CHAPTER 11 CASES, AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; PROVIDED, HOWEVER, THAT THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY: (a) THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT; and (b) TO THE EXTENT OF ANY RECOVERIES FOR A PREPETITION CLAIM AGAINST A RELEASED PARTY THAT MAY BE OBTAINED AGAINST A THIRD-PARTY INSURER (BUT, FOR THE AVOIDANCE OF DOUBT, ANY CLAIM TO WHICH AN INSURER MAY BE SUBROGATED SHALL REMAIN SUBJECT TO THIS RELEASE).

7.5. Release and Waiver of Claims.

(a) **Release by Holders of Claims or Interests.** The following releases and waiver shall be valid, binding, and enforceable and shall supplement any benefits from sections 524 and 1141 of the Bankruptcy Code to the Debtors or Reorganized Debtors and to other parties involved in these Chapter 11 Cases:

AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE: NONE OF: (i) THE DEBTORS AND THE REORGANIZED DEBTORS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS; (ii) THE CCAA PLAN DEBTORS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS; (iii) JP MORGAN CHASE BANK AS ISSUING BANK, ADMINISTRATIVE AGENT AND COLLATERAL AGENT UNDER THE PREPETITION CREDIT AGREEMENT, THE OTHER AGENTS AND THE ARRANGERS UNDER THE PREPETITION CREDIT AGREEMENT, THE STEERING COMMITTEE, AND THE HOLDERS OF PREPETITION LENDER CLAIMS (ALL SUCH PERSONS REFERRED TO IN CLAUSES (i), (ii) AND (iii) ARE REFERRED TO HEREIN COLLECTIVELY AS THE "RELEASED PERSONS"); (iv) THE RELEASED PERSONS' AND 360NETWORKS INC.'s RESPECTIVE PRESENT OR FORMER DIRECTORS, OFFICERS, EMPLOYEES, PREDECESSORS, SUCCESSORS, MEMBERS, AGENTS, REPRESENTATIVES, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, ACCOUNTANTS, UNDERWRITERS, APPRAISERS, AND INVESTMENT BANKERS (IN EACH INSTANCE ACTING IN SUCH CAPACITY); AND (v) ANY PERSON CLAIMED TO BE LIABLE DERIVATIVELY THROUGH ANY RELEASED PERSON OR 360NETWORKS INC., SHALL HAVE OR INCUR ANY LIABILITY TO ANY PERSON FOR ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF ANY ALLEGED FIDUCIARY OR OTHER DUTY AND THE AVOIDANCE OF PREFERENCES OR FRAUDULENT CONVEYANCES OR ANY DERIVATIVE CLAIMS) WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED ON WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION OR OCCURRENCE

FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS, THE CHAPTER 11 CASES, OR THE PLAN AS WELL AS TO THE CCAA PLAN DEBTORS, THE NONDEBTOR AFFILIATES, OR THE CCAA PLAN; AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED (OTHER THAN THE RIGHT TO ENFORCE THE DEBTORS' OR THE REORGANIZED DEBTORS' OBLIGATIONS UNDER THE PLAN, OR THE CCAA PLAN DEBTORS' OBLIGATIONS UNDER THE CCAA PLAN -- INCLUDING, WITHOUT LIMITATION, ANY OBLIGATIONS ARISING UNDER ANY SETTLEMENT AGREEMENT (INCLUDING ANY RELATED POSTPETITION AGREEMENTS) APPROVED BY THE BANKRUPTCY COURT IN THE CHAPTER 11 CASES OR THE CCAA COURT IN THE CCAA CASES -- AND THE CONTRACTS, INSTRUMENTS, NOTES, RELEASES, AGREEMENTS AND DOCUMENTS DELIVERED UNDER ANY SUCH PLAN); *provided, however,* THAT NO RELEASE PROVIDED UNDER THE PLAN SHALL AFFECT THE LIABILITY OF ANY PERSON: (a) THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT; and (b) TO THE EXTENT OF ANY RECOVERIES FOR A PREPETITION CLAIM AGAINST A RELEASED PARTY THAT MAY BE OBTAINED AGAINST A THIRD-PARTY INSURER (BUT, FOR THE AVOIDANCE OF DOUBT, ANY CLAIM TO WHICH AN INSURER MAY BE SUBROGATED SHALL REMAIN SUBJECT TO THIS RELEASE); and *provided further, however,* THAT NOTWITHSTANDING THE RELEASES PROVIDED UNDER THE PLAN, ANY CLAIM ASSERTED AGAINST THE REORGANIZED DEBTORS PURSUANT TO SECTION 7.3 OF THE PLAN SHALL REMAIN SUBJECT TO ANY RIGHT OF SET-OFF THAT OTHERWISE WOULD BE AVAILABLE TO ANY OF THE DEBTORS OR THE REORGANIZED DEBTORS IN THE ABSENCE OF ANY SUCH RELEASE; and *provided, further, however,* THAT NOTWITHSTANDING THE RELEASES SET FORTH IN THIS SECTION 7.5(a) OF THE PLAN, SUCH RELEASES (AND ANY CORRESPONDING RELEASES IN THE CONFIRMATION ORDER) SHALL NOT DISCHARGE, RELEASE, ENJOIN, OR IMPACT IN ANY WAY THE PROSECUTION OF THE CLAIMS ASSERTED OR TO BE ASSERTED AGAINST ANY NON-DEBTOR, INCLUDING, BUT NOT LIMITED TO, 360NETWORK INC.'S PRESENT OR FORMER DIRECTORS, OFFICERS, ACCOUNTANTS AND REPRESENTATIVES, BY THE CLASS ACTION PLAINTIFFS AND THE MEMBERS OF THE CLASS THEY PURPORT TO REPRESENT IN THE ACTIONS ENTITLED *NETTIE KOKURA, ET AL. v. VANESSA WITTMAN, ET AL.*, CASE NO. 02 CV 4837, AND *DAVID SCHWARTZ, ET AL. v. VANESSA WITTMAN, ET AL.*, CASE NO. 02 CV 5460, PENDING IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK TO THE EXTENT SUCH CLAIMS ARE IN CONNECTION WITH THE PURCHASE OF SHARES OF COMMON STOCK OF 360NETWORKS INC. PRIOR TO THE PETITION DATE.

Notwithstanding the foregoing, no third-party releases provided for in this Section 7.5(a) shall apply to release or enjoin any claims of The Texas Comptroller of Public Accounts, against such third parties.

(b) General Release by Debtors Related to Prepetition Lenders.

As of the Confirmation Date, but subject to the occurrence of the Effective Date, pursuant to Bankruptcy Rule 9019 and in consideration for, among other things, the concessions by the holders of Prepetition Lender Claims made pursuant to the Plan and otherwise, the Debtors and the Reorganized Debtors will be deemed to forever release, waive and discharge all claims (including Derivative Claims), obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising in law, equity or otherwise, that are based in whole or in part on any act, omission, transaction or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases or the Plan that such entity has, had or may have against JPMorgan Chase Bank as issuing bank, administrative agent and collateral agent under the Prepetition Credit Agreement, the other agents and the arrangers under the Prepetition Credit Agreement, the Steering Committee, the holders of Prepetition Lender Claims and each of their respective present or former directors, officers, employees, predecessors, successors, members, attorneys, accountants, underwriters, investment bankers, financial advisors, appraisers, representatives and agents, acting in such capacity in connection with the Debtors; provided, however, that the Debtors shall retain the right to review and object to any fees and expenses sought to be reimbursed by any such Person.

(c) Injunction Related to Releases.

As further provided in Section 7.1(b) of the Plan, the Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

(d) No Third Party Release of U.S.A. Environmental or Tax Claims.

Notwithstanding anything in this Article VII or the Confirmation Order to the contrary, no release of non-Debtors or related injunction on behalf of non-Debtors shall apply to environmental or tax claims, causes of action, or rights of, or obligations or liabilities to, the United States of America or any agency thereof.

7.6. Retention and Enforcement of Claims.

Except as otherwise provided in the Plan (including Section 4.3 hereof), or in any contract, instrument, release or other agreement entered into in connection with the Plan or by order of the Court, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors, on behalf of each of the Debtors, shall retain and may enforce any claims, rights and causes of action that any Debtor or estate may hold. The

Reorganized Debtors or any successor to it may pursue those claims, rights and causes of action in accordance with what is in its best interests.

ARTICLE VIII.

CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

8.1. Conditions to Confirmation.

The Bankruptcy Court will not enter the Confirmation Order unless and until the following conditions have been satisfied or duly waived pursuant to Section 8.3 of the Plan:

(a) The Confirmation Order shall be reasonably acceptable in form and substance to the Debtors and the Prepetition Agent and, with respect to any provisions materially affecting the Committee, Committee Claims or distributions to holders of Class 7 Claims, shall be reasonably acceptable to the Committee.

8.2. Conditions to Effective Date.

The Effective Date will not occur and the Plan will not be consummated unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 8.3 of the Plan:

(a) The Confirmation Order shall have become a Final Order.

(b) The CCAA Plan shall have been approved by the CCAA Court by a Final Order.

(c) Reorganized 360 shall have at least \$35,000,000 of Cash on hand, exclusive of Cash to be distributed or reserved for either Distributions or other amounts due under the Plan or the CCAA Plan.

(d) All documents, instruments and agreements contemplated to be entered into, delivered and/or created in connection with the Plan and/or the CCAA Plan, including, without limitation, any amended certificates of incorporation and by-laws of the Reorganized Debtors and the CCAA Plan Debtors, the New Senior Secured Notes, the Registration Rights Agreement (to the extent one is to be entered in connection with consummation of the Plan) and the New Long Term Incentive Plan, shall be reasonably acceptable in form and substance to the Debtors and the Prepetition Agent and, with respect to any provisions materially affecting Committee Claims or distributions to holders of Class 7 Claims, shall be reasonably acceptable to the Committee.

(e) The Debtors shall have obtained all authorizations, consents and regulatory approvals, if any, required to be obtained, and filed all notices and reports, if any, required to be filed, by the Debtors in connection with the Plan's effectiveness, including without limitation any notification or report in compliance with, or consent or approval under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the rules and regulations thereunder and any applicable waiting period with respect to each

(including extensions) shall have expired or been terminated or the requisite consent or approval required thereby shall have been obtained without any material condition or limitation.

8.3. **Waiver of Conditions to Confirmation Date and Effective Date.**

(a) **Waiving Party.** Other than the requirements set forth in Section 8.1(a) of the Plan, each of the conditions to confirmation of the Plan or the occurrence of the Effective Date may be waived in whole or part by the Debtors with the consent of the Prepetition Agent and, with respect to any provisions materially affecting the Committee, Committee Claims or distributions to holders of Class 7 Claims, the Committee, with such Committee consent not to be unreasonably withheld.

(b) **Effect of Waiver or Failure to Waive.** Any such waiver(s) shall not affect the relevant Debtors' benefits under the "mootness doctrine." The failure to satisfy or waive any condition may be asserted by any Debtor, regardless of the circumstances giving rise to the failure of such condition to be satisfied (including, without limitation, any act, action, failure to act, or inaction by any of the Debtors). The failure of a Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth herein) at any time or from time to time.

(c) **Method of Waiver.** To be effective, any such waiver(s) must be in writing and filed with the Bankruptcy Court.

8.4. **Effect of Nonoccurrence of the Conditions to Effective Date.**

If each of the conditions to the occurrence of the Effective Date has not been satisfied or duly waived on or before the first Business Day that is more than 179 days after the Confirmation Date (or by such later date as the Debtors propose and the Bankruptcy Court approves, after notice and a hearing), upon motion by any party in interest, the Confirmation Order may be vacated by the Bankruptcy Court; *provided, however*, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant to this section, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against, liens on property of the Debtors; or (b) prejudice in any manner the rights of any of the Debtors, including (without limitation) the right to seek further extensions of the exclusivity periods under section 1121(d) of the Bankruptcy Code, which exclusivity periods shall be deemed to have been extended to the date sixty (60) days after the date of entry of any order vacating the Confirmation Order, subject to the rights of any party to seek to shorten the exclusivity periods after notice and hearing.

ARTICLE IX.

ADMINISTRATIVE PROVISIONS

9.1. Retention of Jurisdiction.

Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Court shall retain jurisdiction for the following purposes:

- (a) Determination of the allowability of Claims and Interests upon objection to such Claims or Interests by a Debtor, Reorganized Debtors, other successors to any of the Debtors or any other party in interest and the validity, extent, priority and nonavoidability of consensual and nonconsensual liens and other encumbrances;
- (b) Determination of any Debtor's tax liability pursuant to section 505 of the Bankruptcy Code;
- (c) Determination of Professional Fee Claims and any disputes regarding Committee Preference Fees or Requested Debtor Fees;
- (d) Approval, pursuant to section 365 of the Bankruptcy Code, of all matters related to the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease of any of the Debtors;
- (e) Determination of requests for payment of administrative expenses entitled to priority under section 507(a)(1) of the Bankruptcy Code, including compensation of parties entitled thereto;
- (f) Resolution of controversies and disputes regarding the interpretation of the Plan;
- (g) Implementation of the provisions of the Plan and entry of orders in aid of confirmation and consummation of the Plan, including, without limitation, appropriate orders to protect the Debtors and their successors from actions by creditors and/or interest holders of the Debtors or any of them and resolving disputes and controversies regarding property of the estates and Reorganized Debtors that is subject to restructuring negotiations on and after the Confirmation Date;
- (h) Modification of the Plan pursuant to section 1127 of the Bankruptcy Code;
- (i) Adjudication of any causes of action that arose preconfirmation or in connection with the implementation of the Plan, including avoidance actions, brought by a Debtor, Reorganized Debtor, other successor of any of the Debtors as the representative of the Debtors' estates or party in interest (as a representative of any Debtor's estate);
- (j) Adjudication of Committee Claims;

- (k) Entry of a Final Order closing the Chapter 11 Cases;
- (l) Resolution of disputes concerning any Claims for disputed Distributions;
- (m) Resolution of any disputes concerning any release of a nondebtor hereunder or the injunction against acts, employment of process or actions against such nondebtor arising hereunder;
- (n) Resolution of any disputes concerning whether a Person had sufficient notice of: (i) the Chapter 11 Cases; (ii) the applicable Claims' bar date; (iii) the hearing on the approval of the Disclosure Statement as containing adequate information; (iv) the hearing on confirmation of the Plan for the purpose of determining whether a Claim is discharged hereunder; or (v) for any other purpose;
- (o) Issuance of injunctions, grant and implementation of other orders, or taking such other actions as may be necessary or appropriate to restrain interference by any Person with consummation or enforcement of the Plan;
- (p) Resolution of controversies and disputes regarding settlement agreements, orders, injunctions, judgments, and other matters entered or approved by the Bankruptcy Court in connection with any adversary proceeding, discovery, or contested matter in any of the Chapter 11 Cases;
- (q) Correction of any defect, cure of any omission or reconcile any inconsistency in the Plan, the Confirmation Order, organizational documents of Reorganized Debtors or any other documents relating to the Plan, as may be necessary to carry out the purposes or intent of the Plan;
- (r) Adjudication of any pending adversary proceeding, or other controversy or dispute, in any of the Chapter 11 Cases, which arose pre-confirmation and over which the Bankruptcy Court had jurisdiction prior to confirmation of the Plan;
- (s) Entry and implementation of such orders as may become necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated; and
- (t) Determination of any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, or other agreement or document created in connection with the Plan or Disclosure Statement.

9.2. Governing Law.

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal laws apply, the rights and obligations arising under the Plan shall be governed by the laws of the State of New York, without giving effect to principles of conflicts of law.

9.3. Amendments.

(a) **Pre-Confirmation Amendments.** The Debtors reserve the right to modify the Plan at any time prior to the Confirmation Date.

(b) **Postconfirmation Amendment Not Requiring Resolicitation.** After the entry of the Confirmation Order, the Debtors may modify the Plan to remedy any defect or omission or to reconcile any inconsistencies in the Plan or in the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided that: (i) the Debtors obtain approval of the Court for such modification, after notice and a hearing; and (ii) such modification shall not materially and adversely affect the interests, rights, treatment or Distributions of any Class of Allowed Claims or Allowed Interests under the Plan or the Committee. Any waiver under Section 8.3 hereof shall not be considered to be a modification of the Plan.

9.4. Successors and Assigns.

The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heir, executor, administrator, successor, or assign of such Person.

9.5. Severability.

Should any provision in the Plan be determined to be unenforceable following the Confirmation Date, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan; provided that the Plan, as modified, meets the requirements of the Bankruptcy Code, including, without limitation, section 1127 of the Bankruptcy Code.

9.6. Confirmation Order and Plan Control.

To the extent the Confirmation Order and/or the Plan is inconsistent with the Disclosure Statement, any other agreement entered into between or among any Debtor(s), or any of them and any third party, the Plan shall control. To the extent of any inconsistencies between the Plan and the Confirmation Order, the Confirmation Order shall control.

9.7. Payment of Statutory Fees.

All fees payable pursuant to section 1930 of title 28, United States Code, due and payable through the Effective Date shall be paid by the Debtors or the Reorganized Debtors on or before the Effective Date and amounts due thereafter shall be paid by the Reorganized Debtors in the ordinary course.

9.8. Continuation of Injunctions and Stays.

Unless otherwise provided, all injunctions or stays ordered in the Chapter 11 Cases, pursuant to section 105 of the Bankruptcy Code or otherwise, and extant

on the Confirmation Date shall remain in full force and effect unless or until subsequently modified or terminated.

9.9. Application of Bankruptcy Code section 1146(c).

The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under the Plan shall be entitled to the tax treatment provided by sections 1146(c) of the Bankruptcy Code and each recording or other agent of any governmental office shall record any such documents of issuance, transfer, or exchange without any further direction or order from the Court.

9.10. Rules of Construction.

(a) **Undefined Terms.** Any term used herein that is not defined herein shall have the meaning ascribed to any such term used in the Bankruptcy Code and/or the Bankruptcy Rules, if used therein.

(b) **Interpretation.** (i) The words "herein," "hereof," "hereunder," and other words of similar import refer to the Plan as a whole, not to any particular section, subsection, or clause, unless the context requires otherwise; (ii) whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural and each pronoun stated in the masculine, feminine, or neuter includes the masculine, feminine, and the neuter; (iii) captions and headings to articles and sections of the Plan are inserted for convenience or reference only and are not intended to be a part or to affect the interpretation of the Plan; and (iv) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply, unless superseded herein or in the Confirmation Order.

9.11. Creditors' Committee.

After the Effective Date of the Plan, the duties of the Committee shall be limited to: (a) handling Committee Claims and related General Unsecured Claims resolutions; (b) appearing in connection with any appeals or motions for reconsideration brought by any party in interest or modification of the Confirmation Order or the Plan; (c) review of Professionals Fee Claims; (d) review of and objection to any settlement of a Claim against the Debtors where such settlement would provide for an Allowed Class 7 Claim in excess of \$100,000; (e) fulfilling its role with respect to the allocation of Claims between the CCAA Plan Debtors and the Debtors pursuant to Section 3.7(d) of the Plan; and (f) objection to any General Unsecured Claim in excess of \$100,000 not otherwise covered by this section if, after providing ten (10) days' written notice to the Reorganized Debtors, the Committee maintains a good faith belief that the Reorganized Debtors have no valid business judgment for not objecting to such claim. As provided in Section 4.3(d) hereof, fees related to clause (a) above shall be paid by the Debtors for the period prior to the Effective Date or from the Preference Account. The reasonable fees and expenses of the Committee in performing its role under clauses (b), (c), (d) and (e) of this Section 9.11 shall be paid by the Reorganized Debtors; *provided, however*, that Debtors also shall pay the reasonable fees and expenses for the Committee's role under clause (f) of this section respecting a particular claim objection if:

- (1) the Committee requests a written explanation by the Reorganized Debtors of the basis for any decision not to object to a particular General Unsecured Claim in excess of \$100,000 and the Reorganized Debtors fail to provide such explanation; or
- (2) the Committee determines in good faith that the explanation provided by the Reorganized Debtors for their decision not to pursue such objection does not represent sound business judgment under the standard generally applicable under section 363 of the Bankruptcy Code, and the Bankruptcy Court agrees with the Committee's determination.

Any other reasonable fees and expenses incurred by the Committee after the Effective Date in performing its authorized role with respect to clause (f) of this section or for any role not specified herein shall be paid from the Class 7 portion of the Net Preference Recoveries. Post Confirmation, the fees and expenses of the Committee and Committee Professionals (including any additional professionals retained by the Committee) may be paid by the Debtors or from the Preference Account, as the case may be, without application to or order from the Court.

Respectfully submitted,

360networks (USA) inc.
Debtor and Debtor in Possession

360networks Michigan LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

Telecom Central, L.P.
Debtor and Debtor in Possession

360networks Mississippi LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360networks holdings (USA) inc.

360networks Tennessee LLC

Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360fiber inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360fiber (USA 2) inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360fiber (USA 3) inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360networks (USA) of Virginia inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei

Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360carrier management inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

TRES Management LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

Meet Me Room LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

Carrier centers Georgia, inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei

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Title: Authorized Officer

Title: Authorized Officer

360networks LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

Carrier Center LA, Inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
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Title: Authorized Officer

360networks Illinois LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

Texas Carrier Centers Inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360networks Iowa LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360pacific (USA) inc.
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360networks Kentucky LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

360networks Louisiana LLC
Debtor and Debtor in Possession

By: /s/ Gregory B. Maffei
Name: Gregory B. Maffei
Title: Authorized Officer

PLAN SCHEDULE 1.55Summary of Terms and ConditionsofNew Senior Secured Notes

I. <u>Issuer:</u>	The Notes will be joint and several obligations of all of the Debtors and CCAA Plan Debtors (collectively, "Reorganized 360"). The Issuer is to be determined.
II. <u>Principal Amount:</u>	\$215,000,000
III. <u>Maturity:</u>	The fifth anniversary of the Effective Date.
IV. <u>Interest Rate:</u>	LIBOR <u>plus</u> 5%, subject to downward adjustment based on the Reorganized 360's debt/EBITDA ratio measured periodically during the term of the Notes. Interest shall be payable in cash quarterly in arrears.
V. <u>Amortization:</u>	
A. <u>Optional Prepayments:</u>	The New Senior Secured Notes shall be prepayable at any time, in whole or in part, without premium, penalty or discount, on 30 days' prior written notice, at 100% of the principal amount of the New Senior Secured Notes to be prepaid, plus accrued interest thereon through the date of prepayment.
B. <u>Mandatory Prepayments:</u>	\$20,000,000 on third anniversary of the Effective Date, and \$24,000,000 on the fourth anniversary of the Effective Date.
VI. <u>Collateral and Ranking:</u>	Secured by all of the assets of Reorganized 360, including cash.

VII. <u>Financial/Performance Covenants</u>	<p>Financial Covenants may include:</p> <ul style="list-style-type: none"> ▪ Minimum EBITDA ▪ Minimum Capex ▪ Minimum recurring service revenue
VIII. <u>Representations, Warranties, Covenants and Events of Default:</u>	Customary for notes of this type.
IX. <u>Third Party Credit Facility</u>	<p>After the sixth month anniversary of the Effective Date, the Plan Debtors will be permitted to obtain a credit facility from a third-party lender, provided that the maximum principal amount of the commitments and outstanding borrowings under such credit facility do not exceed \$25,000,000. The Debtors will be permitted to grant liens and security interests on their accounts receivable and other assets to the extent necessary to obtain the credit facility, with such liens and security interests having a priority senior to the priority of the liens and security interests on such accounts receivable and such other assets securing the notes.</p>
X. <u>Amendments</u>	<p>The New Senior Secured Notes may be amended by a vote of the holders of 51% of such notes, other than with respect to matters that customarily require the consent of 100% of the holders of notes of this type.</p>

PLAN SCHEDULE 1.9(i)

EQUIPMENT REPOSSESSED/RETURNED DURING PREFERENCE PERIOD

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PLAN SCHEDULE 1.9(j)

PREFERENCE PERIOD PAYMENTS MADE IN CONNECTION WITH ASSUMED CONTRACTS

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PLAN SCHEDULE 1.43
IMPAIRED CLASS 6 CLAIMS

PLAN SCHEDULE 3.5(a)

AMOUNTS OF NONCONSENSUAL LIEN CLAIMS

PLAN SCHEDULE 3.6(c)

**CLASS 6 CLAIMS ALLOWED AMOUNTS AND, IF APPLICABLE,
CURE AMOUNTS FOR REINSTATEMENT**

NONE (OTHER THAN IMPAIRED CLASS 6 CLAIMS)

PLAN SCHEDULE 6.2(a)(1)

**UNEXPIRED LEASES AND EXECUTORY CONTRACTS (OTHER THAN
UNDERLYING RIGHTS) TO BE ASSUMED
UNDER THE PLAN AND RELATED CURE AMOUNTS**

PLAN SCHEDULE 6.2(a)(2)

UNDERLYING RIGHTS TO BE REJECTED UNDER THE PLAN

991457.27

PLAN SCHEDULE 6.2(a)(3)

CURE AMOUNTS (OTHER THAN \$0) FOR UNDERLYING RIGHTS

NONE

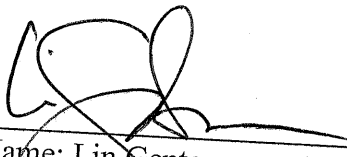
VERIFICATION

VERIFICATION

THE DISTRICT OF COLUMBIA

: ss.

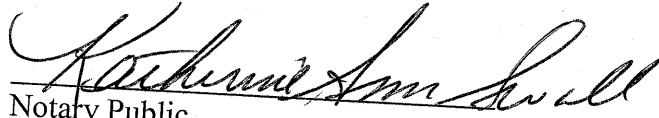
I, Lin Gentemann, being first duly sworn, state that I am General Counsel and Corporate Secretary of 360networks inc., the ultimate parent of Petitioner in the foregoing filing; that I am authorized to make this Verification on behalf of Petitioner; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



Name: Lin Gentemann

Title: General Counsel and Corporate Secretary
360networks inc.

Sworn and subscribed before me this 22nd day of October, 2002.


Notary Public

Katherine Ann Swall
Notary Public in and for
The District of Columbia

My commission expires October 31, 2002

